A Best Practices Guide:

Governance

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Office of AIDS Programs and Policy

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Introduction

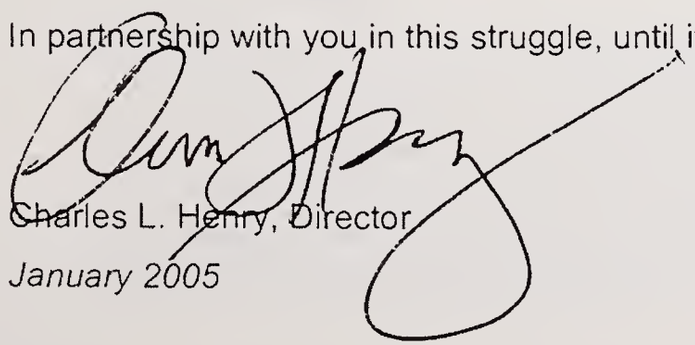
This *Best Practices Guide* was developed by the Office of AIDS Programs and Policy (OAPP) to assist Los Angeles County nonprofit organizations serving people living with or at risk for infection with HIV/AIDS. It was made possible by grants from the Centers for Disease Control and Prevention, the Office of Minority Health and the Health Resources and Services Administration. This *Governance* guide specifically is intended to aid the boards of directors of our community partners in strengthening their governance capacity and effectiveness.

As stated by the California Attorney General's Office, "The board of directors of a nonprofit corporation is in charge of its affairs and is ultimately responsible for everything that the corporation does. The board's authority is paramount even to that of the CEO." OAPP recognizes the vital role that the board plays and understands the importance of having strong and healthy boards in order for agencies to effectively deliver services. Accordingly, this guide is made available as a general resource tool for boards of directors to refer to in their efforts to guide and support the agencies they serve.

This information was synthesized from a variety of resource materials by Lela Hung, Director, and Tamara Henry, Research Assistant, in OAPP's Provider Support Services Division. This governance guide is the first of a series covering all aspects of nonprofit management. OAPP is pleased to provide you with this resource in order to build the organizational capacity and effectiveness of nonprofits providing HIV/AIDS services in Los Angeles County.

Thank you so much for your many contributions and services to people living with or at risk for HIV/AIDS.

In partnership with you in this struggle, until it is over,



Charles L. Henry, Director

January 2005

"I still refer back to *A Best Practices Guide: Governance* and I feel it has developed my personal dedication to being an effective board member."

-Tim Towery, Board Member

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Composition and Structure

I. Number of Directors

The Law: A California nonprofit corporation must have at least one director and at least three officers, including a president (or chairperson of the board), a secretary and a treasurer (or Chief Financial Officer). However, the law is more complicated than it appears. A director may fill the position of more than one officer, but there is a restriction that the president cannot hold the offices of secretary or treasurer. Therefore, there is a legal minimum of ***two*** people to fill the officer positions, i.e. one to be president and one to be secretary-treasurer. Yet if only one of those two people is an official *director*, that director *cannot* resign, unless he or she gives notice to the CA Attorney General. That is, if there is only one director, they cannot simply resign leaving *no one* in charge of the agency's affairs.[1]

Best Practice: The Board of Directors should have no fewer than ***seven*** voting directors, of no direct family relation to each other or staff. The Office of AIDS Programs and Policy recommends seven as the *minimum* number of directors necessary to allow for significant deliberation and diversity. While there is no set standard for the maximum number of directors on a board, *too many* directors could also inhibit effective governance. Specific maximum and minimum limits should be determined based on the size and

[1] Attorney Anthony Mancuso; *How to form a Nonprofit Corporation in California—9th Edition*; September 2000 & California Corporation Code 5226

scope of the organization and should be clearly stated in the agency's bylaws.[2]

II. Recruitment/Election of Directors

The Law: With respect to the election of directors there are two kinds of nonprofit corporations under California law—those that have voting members and those that do not. A corporation can have as few as one voting member. Voting members are analogous to the shareholders of a for-profit corporation. Generally, if a nonprofit corporation has voting members, they must elect its board of directors. If a nonprofit corporation does not have voting members, then new directors must be elected by vote of the current members of the board, according to the majority standard set forth in the organization's bylaws (see *Voting* and *Quorum*).[3]

Best Practice: The board nomination process should be announced to the organization's public, so that interested persons or community members can nominate themselves or others. There should be written job descriptions for board members and officers, which should be made available to candidates before they are elected to the board. Lastly, candidates should also be presented with written expectations, such as attendance, participation in fundraising activities, committee meetings and service activities.[4] For more information on the recruitment of new board members, please see *Recruiting and Training New Board Members* in the chapter titled *Roles and Responsibilities*.

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[2] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector;* The Better Business Bureau Wise Giving Alliance's *Governance, Policy and Program Fundamentals;* The National Charities Information Bureau's *Standards in Philanthropy* & The Minnesota Council of Nonprofits' *Governance: Basics*

[3] James M. Cordi, Supervising Deputy Attorney General, CA Attorney General's office

[4] The Minnesota Council of Nonprofits' *Governance: Basic*

III. Residency

The Law: The California Nonprofit Corporation Law does not impose residency requirements on directors—that is, an organization may have directors who live and work out of state.[5]

Best Practice. The Board should reflect the community served by the agency and the attendance of all board members should be strongly encouraged, therefore it is preferable that directors reside within the greater vicinity of the nonprofit.[6]

IV. Age Requirements

The Law. The California Nonprofit Corporation Law does not impose age requirements on directors.[7]

Best Practice. There is an increasing trend across the US to include youth on nonprofit boards, due to the diverse viewpoints they can contribute, their potential to assist the long-term growth of the organization and their capacity to bridge relationships between nonprofits and youth in the community. However, doing so *could* lead to contractual problems and require amendments to a nonprofit's bylaws and budget. If an agency is considering including a member under 18 years of age on its board, it is advisable to consult with an attorney, review the organizations bylaws and fully consider what other adjustments might need to be made.[8]

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[5] Mancuso, 2000
[6] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations* The Minnesota Council of Nonprofits' *Governance: Basics*
[7] Mancuso, 2000

V. Diversity

The Law: There are no laws specifying diversity requirements for nonprofit boards.

Best Practice. The Board of Directors should reflect the diversity of the communities served by the organization. Organizations vary widely in their ability to demonstrate pluralism and diversity. However, in general, greater diversity tends to be found in stronger nonprofits. According to a recent survey of the nonprofit opinion leaders Grantmakers for Effective Organizations (GEO), the Association for Research on Nonprofit and Voluntary Action (ARNOVA) and the Alliance for Nonprofit Governance, 90% of the nonprofits they identified as high-performing are "somewhat" to "very" diverse.[9] It is also important to note that diversity comes in many forms, therefore nonprofits should not just consider how ethnically diverse its board is, but also whether its board represents the spectrum of age, gender, sexual orientation, experience (including nonprofit, corporate and government experience) and class. While complete diversity on all levels may not be attainable, it is useful to keep these components of diversity in mind. Every organization should also establish a *policy*, consistent with its mission statement, that fosters such inclusiveness.[10]

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[8] Betsy Rosenblat; *Young Voices in the Nonprofit Boardroom*; National Center for Nonprofit Boards; 2000

[9] Paul C. Light; *Pathways to Nonprofit Excellence*; The Brookings Institute; 2002

[10] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The National Charities Information Bureau's *Standards in Philanthropy*

VI. Term Limits

The Law. The directors of a nonprofit public benefit corporation *with members* may serve on the board for a maximum term of ***three years***. The directors of a public benefit corporation *without members* may serve for terms of up to ***six years***. Religious corporation directors may have such terms as are specified in their bylaws. For both public benefit and religious corporations, if no provision is specified in the bylaws, directors may only serve for ***one year***. However, directors whose terms of office have run out may be re-elected immediately to serve an unlimited number of additional consecutive terms.[11]

Best Practice. Specific terms of office for board officers and members should be clearly set forth in a nonprofit's bylaws. Individual terms should be established at no more than ***three years***, allow individuals to serve no more than ***three consecutive terms*** and require at least ***one year intervening*** before eligibility for re-election after serving the maximum number of consecutive terms.[12]

VII. Removal of Directors

The Law. The removal of directors may be conducted by a majority vote of either the members, or of the directors if the corporation has no members. Unless they "are of unsound mind, have committed a felony or have breached any of their legal duties" a director may not be removed prior to

[11] Mancuso, 2000 & California Corporations Code 5220
[12] The Minnesota Council of Nonprofits' *Governance: Basics* & The BBB Wise Giving Alliance's *Governance, Policy and Program Fundamentals*

the expiration of the director's term of office.[13] Religious corporations may set up their own rules, in their articles or bylaws, for removal of directors.[14]

Best Practice. A personal intervention by other members of the board should always be the first approach when dealing with a problematic board member. Furthermore, term limits may help to eliminate such problems from arising in the first place. However, if removal proves to be necessary, a formal vote should be taken according to rules set forth in the organization's bylaws. Additionally, a nonprofit board should thoroughly review the California Corporations Code Sections 5220-5227 and consult an attorney before taking action to remove a director, to avoid any legal trouble.[15]

VIII. Public Members/Constituent Members

The Law. There are no laws requiring a California nonprofit to have public or constituent members. The legal minimum number of people required to form a nonprofit board of directors is discussed above under "Number of Directors."

Best Practice. In order for a nonprofit board to accurately represent the interests of the community served by the organization, it is often best to include some constituent members in addition to the directors holding officer positions on the board. Community representation therefore should be one of the criteria sought after in the strategic selection of board members.[16]

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[13] CA Corporations Code 5221 & 5222
[14] Mancuso, 2000
[15] Jan Masaoka, *Nonprofit Directors Removing a Difficult Board Member;* BoardSeat.com; 2001
[16] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations*

IX. How Often to Meet

The Law. The California Nonprofit Corporations Code does not specify a minimum number of meetings that a nonprofit board should hold each year, requiring only that agencies meet the minimum set forth in their bylaws. However, if a corporation is required to hold regular meetings according to its bylaws and it fails to hold one for a period of sixty days after a date designated for a meeting, then the County Superior Court can order it to do so. Also, if a California nonprofit is required to hold regular meetings according to its bylaws and does not do so for a period of fifteen months after its incorporation, the county superior court can again order it to do so.[17]

Best Practice. A minimum of four meetings a year with a *quorum* present is required, by most standards, for a board to stay on top of all of its governance responsibilities.[18] According to a recent survey conducted by Paul C. Light of The Brookings Institute of the nonprofit opinion leaders Grantmakers for Effective Organizations (GEO), the Association for Research on Nonprofit and Voluntary Action (ARNOVA) and the Alliance for Nonprofit Governance, ninety percent of respondents said that most of the high performing nonprofits they know hold at least four board meetings a year.[19] However, this figure must still be viewed as a *minimum* required for good governance, which does not fully answer the question of what is the *best* practice. As Susan Scribner writes, it is often necessary for the board to at least begin by having many more general meetings:

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[17] CA Corporations Code 5510

[18] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The National Charities Information Bureau's *Standards in Philanthropy*

[19] Paul C. Light; *Pathways to Nonprofit Excellence*; The Brookings Institute; 2002

> *"Look at your agency as a business—how often does a leadership need to meet to make prudent and timely decisions? I have found that Boards can serve effectively if they meet every other month, ONLY if they have working committees. Until they "earn" that right to do so, I encourage them to meet* ***every month****... sometimes more during critical times."*[20]

X. Quorum

The Law. In order for a board of directors to take action at a meeting, a specified proportion of the total number of directors for the agency, known as a quorum, must be present. At a minimum, public benefit corporations may provide for a quorum that is no fewer than two directors or one-fifth of the total number of directors, whichever is larger. However, if a corporation sets a higher number as a quorum, then legally the agency must abide by that minimum.[21]

Best Practice. Usually a quorum represents a simple majority, or at least approximately 51%, of the total number of directors for a corporation. It may be set higher, in order to ensure greater participation in board activities.[22]

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[20] Scribner, OAPP's *Extranet Follow-Up Q&A*, 2-26-2003
[21] Mancuso, 2000
[22] Mancuso, 2000

XI. Voting

The Law. Unless otherwise stated in the agency's Articles of Incorporation or Bylaws, the board must pass a resolution by the ***majority*** vote of the directors present at a meeting at which a quorum is present. Therefore, for example, if a nonprofit board consists of *ten* members, and the quorum is established as a simple majority (half plus one) of *six* members, then the simple majority of those six required to pass a vote would equal *four* board members.

There are a couple of exceptions to the law described above however. First, certain actions taken by the board of directors, such as the approval of self-dealing transactions (transactions in which one or more of the directors benefits or has some personal interest), must be passed without counting the votes of the "interested" directors. Approval of a self-dealing transaction also requires the vote of a majority of *all* directors, not merely a majority of a quorum.[23] Accordingly, this may entail additional board members being present to obtain the minimum number of votes required for a resolution to be passed. A second point to be noted is that if a quorum is present initially at a meeting, and one or more board members leave resulting in the loss of a quorum, action may in some cases still be taken. This is because the law allows action as long as you can still obtain the votes of a majority of the required quorum stated in the bylaws. In the example above, a majority of the required quorum was *four* members. Therefore if two of the six board members required for a quorum left the meeting, then as long as all four remaining members agreed to pass a resolution, it could pass.[24]

[23] James M. Cordi, Supervising Deputy Attorney General, CA Attorney General's office
[24] Mancuso, 2000

Best Practice. Voting procedures should be clearly outlined in the bylaws of a corporation and a simple majority should be established as the minimum vote necessary to pass a resolution. Board members should be strongly encouraged to attend all board meetings through use of an attendance policy, so that situations in which there is not a quorum present for voting, can be avoided. Full participation by all board members in all votes is, of course, optimal.

XII. Compensation and Paid Staff Members

The Law. According to California law, no more than 49 percent of the members serving on the board may be "interested" persons, which includes anyone who has been compensated by the corporation for services rendered, other than as a director, within the previous twelve months, such as a paid accountant, attorney or employee of the corporation. There is no regulation specifically regarding an executive director serving as a voting member on the board.[25]

Best Practice. It is a generally accepted standard among nonprofit organizations that board members should not receive compensation for their board service, other than reimbursement for expenses directly related to their board duties. In addition to keeping the focus on the public benefit, an uncompensated board membership policy significantly protects the board of directors from liability. To reap such benefits, no more than one voting member of the board should be a paid staff person of the organization and no paid staff person should serve as the board chair or treasurer. Where a paid employee is a voting member of the board, there must be systems and policies in place

[25] CA Corporations Code Section 5227

to ensure that the employee will not be in a position to exercise undue influence.[26]

The Office of AIDS Programs and Policy recommends that the Executive Director not serve as a voting member, as that can lead to serious conflicts of interest and a confusion of governance responsibilities. However, there is a rising trend of Executive Directors serving as *non-voting* members, which can be advantageous to board-staff cooperation.[27]

[26] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector*, The Minnesota Council of Nonprofits' *Governance: Basics*, Charities Review Council of Minnesota, *Standards*, 1998 & The National Charities Information Bureau's *Standards in Philanthropy*

[27] Compasspoint.org, *Should an executive director be a member of the board?*, April 2001

Roles and Responsibilities

I. Mission Statement and Vision Statement

One responsibility of a nonprofit board is to establish and periodically review the organization's **mission statement**. An organization's mission statement is a statement of purpose, defined and approved by the board of directors, which is intended primarily to guide an organization in its work and help narrow its scope of services. The mission statement is *not* a formal legal document and must be distinguished from the purposes clause in an organization's certificate of incorporation and the statement of activities and purposes that appear in the organization's application for tax exemption from the IRS. The board of directors should periodically revisit its mission, ***every three to five years***, to determine if the need for the organization's services still exists. The board should also evaluate whether the mission needs to be modified to reflect societal changes, whether its current programs should be revised or discontinued or if new programs need to be developed.[1]

It is also advisable for a nonprofit to establish a **vision statement**, which describes the organization's desired future, often expressed in terms of the organization's impact and image.[2] This should be ***periodically*** revisited alongside the mission statement, to ensure that the work of the organization remains consistent with its overall goals.

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[1] The Maryland Association of Nonprofit Organizations' *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The Conservation Company, *Mission Possible: Improving your Organization's Mission Statement*, printed in New York Nonprofits, Sept./Oct. 1999

[2] The Conservation Co., *Mission Possible*, 1999

II. Policy Making

Nonprofit boards of directors are responsible for setting and periodically reviewing the rules for internal governance for the corporation, known as **bylaws**. While there are no legal requirements governing these bylaws, there are many best practices for how to best utilize this valuable governance tool. An organization's bylaws should be established close to the time of incorporation and thereafter reevaluated periodically as needed. The bylaws should include policies regarding voting, attendance, term limits, elections, meeting frequency, committee rules and conflicts of interest, to name a few. For a template and sample bylaws, see *Appendix A.*

The board should also establish and approve written **personnel policies** governing the work and actions of the organization's paid and volunteer staff. These policies and procedures should address a wide scope of issues ranging from working conditions and employee benefits to grievance procedures and confidentiality of records and information.[3] A comprehensive list of personnel policies that should be considered by the board can be found under *Appendix B.*

Financial policies also serve as one of the cornerstones of effective board governance. The financial policies should also be set and ***periodically*** reevaluated by the board of directors to ensure the financial soundness of the organization and thereby the foundation for its success and future growth. They should include:

- Policies for the board's annual budget approval process (see *Approving and Monitoring the Annual Budget*, in the section *Ensuring Financial Soundness*)

[3] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The Minnesota Council of Nonprofits' *Governance: Basics*

- Policies for the timely board review of financial statements ***at least quarterly*** and before they are made available to the public[4]
- Policies governing the investment of the assets of the agency
- Policies governing purchasing practices
- Internal control procedures
- Fundraising standards of conduct, ensuring that information is given out for fundraising purposes in an accurate, truthful and not misleading manner and that no unwarranted pressure is applied[5]
- An established procedure by which employees and volunteers can confidentially report any suspected financial improprieties or misuse of organization resources[6]
- Policies establishing the ways in which financial information will be disclosed to the public—such as through an annual report, web availability of 990s and promptly upon request[7]

III. Planning and Goal Setting

One of the board of directors' main responsibilities is to engage in long-term and short-term planning in order to tie the agency's activities to its mission. In order to fulfill this function, the agency should define specific goals and objectives related to the mission and evaluate yearly the success of its programs toward achieving the mission. The board should also work with the executive director to

[4] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The Better Business Bureau Wise Giving Alliance's *Governance, Policy and Program Fundamentals*

[5] The Better Business Bureau Wise Giving Alliance Standards for Charitable Accountability, #15 & National Charities Information Bureau—Standards in Philanthropy

[6] Whatcom Council of Nonprofits, *Best Practices for Executive Directors and Boards of Nonprofit Organizations*

[7] The Better Business Bureau Wise Giving Alliance Standards for Charitable Accountability, #16 & National Charities Information Bureau—Standards in Philanthropy

clearly communicate to the entire organization the goals and objectives they have developed along with their value and connection to the mission.[8]

All objectives should be accompanied by operation, program, fundraising and marketing plans—though the board need not always develop specific plans itself. Sometimes it is a better use of the board's time for them to focus on the quality of the plans developed by staff and to ask key questions keeping the plan linked to the agency's mission. Throughout this process, though, there should be open dialogue between management and staff to encourage recommendations and a clearer idea about the feasibility of projects.[9]

Finally, the implementation of these projects and plans should be regularly monitored and adjustments and new plans should be made as needed. If the agency is considering hiring an independent program evaluator, it might be a good idea to have the board help in the selection process and to have the evaluator report to the board, as well as the staff.[10] For guidelines to successful planning see *Appendix C*. For a basic overview of various strategic planning models see *Appendix D*.

IV. Ensuring Financial Soundness

A nonprofit board of directors plays a vital role in ensuring a solid and bright future for their agency through the guidance they provide in the agency's financial affairs. The board has many duties related to governance, not the least of which is the establishment of clear financial policies, as explained above in the Policy

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[8] The Maryland Association of Nonprofit Organization's *Standards for Excellence: An Ethics and Accountability Code for the Nonprofit Sector* & The Minnesota Council of Nonprofits' *Governance: Basics*

[9] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations* & Alliance for Nonprofit Management, *Frequently Asked Questions: What is the role of governance in planning and budgeting?*, www.allianceonline.org

[10] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations* & Alliance for Nonprofit Management, *Frequently Asked Questions: What are some practical ways to strengthen governance?*, www.allianceonline.org

Making section. Other financial functions that a nonprofit board serves range from approving and monitoring the annual budget to fundraising.

Approving and Monitoring the Annual Budget

Approving the annual budget requires careful consideration and several checking mechanisms along the way. As with most planning issues, the board's role is not to formulate the budget itself, but instead to ask the critical questions in assessing the quality of the budget and to pinpoint any potential problems. The board should have clear communication with the executive director and key financial management staff in order to ensure a budget that:

- Is tied to program outcomes
- Contains realistic projections of revenues and expenses for programs, fundraising and administration
- Allocates a relatively small percentage of resources to fundraising and administration (***seventy percent*** *of revenue used directly for programs should be the goal*)[11]
- Has classifications which correspond to those listed in the audited financial statements
- Does not contain a deficit in net current assets or revenue while at the same time does not accumulate too large a proportion of unrestricted net assets, as those funds could be used for current program activities.[12] Unrestricted net assets available for current use should not be more than ***twice*** the current year's expenses or twice the next year's budgeted operating expenses, whichever amount is larger. At the same time, in order to continue providing services in the case of an unforeseen event, it is advisable

[11] The Minnesota Council of Nonprofits' *Governance: Basics*
[12] National Charities Information Bureau, *Standards in Philanthropy*

for nonprofits to maintain a fund of at least **half** their current or next year's budget, whichever quotient is higher[13]

The board should therefore arrange a meeting with the necessary staff before the beginning of the fiscal year to discuss these issues, suggest amendments to the budget and once all items have been addressed, give formal approval in writing. Finally, the board should analyze the agency's overall performance in relation to the budget at least ***four times a year***, to ensure that spending, fundraising and accounting stay on track (see below, under *Approving Financial Statements*).

Audits and Accounting

The board should work with the executive director to ensure that an appropriate outside review or audit is conducted ***yearly*** in accordance with generally accepted auditing standards as well as funder requirements (unless the agency's annual gross income is less than $250,000, in which case a review by a certified public accountant should be sufficient).[14] Additionally, the Nonprofit Integrity Act of 2004, effective January 1, 2005, *requires* all California nonprofits with gross annual incomes of more than $2,000,000 to have an independent audit performed annually.[15] California nonprofit agencies with gross annual incomes of more than $2,000,000 must also establish and maintain an audit committee appointed by the board of directors with the responsibility of hiring and firing independent certified public accountants to perform audits.[16] The committee may include non-board members, but not agency personnel, and members of the board finance committee cannot comprise more than 50% of the audit committee.

It can be beneficial to smaller agencies as well to have these auditors/evaluators be selected by the board and for them to report back their

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[13] Charities Review Council of Minnesota, *Standards*, 1998 & Charity Navigator, *Methodology: Our Ratings Table, Working Capital Ratio*, www.charitynavigator.org
[14] BBB Wise Giving Alliance, *Standards for Charity Accountability*, p.4
[15] CA Government Code Section 12586 (e) (1)
[16] CA Government Code Section 12586 (e) (2)

findings directly to the board.[17] As stated earlier in the discussion of personnel policies, in order to prevent any financial improprieties or misuse of organizational resources from surfacing during audits, the board should establish a procedure by which employees and volunteers can confidentially report such activities.[18] Finally, the board of directors should, in their review of financial statements, make sure that accounting is being carried out according to generally accepted accounting principles and that improvements recommended based on the audit have been implemented.

Approving Financial Statements

Internal financial statements should be prepared at least ***quarterly*** for review by the board of directors. These statements should identify and explain any material variation between actual and budgeted revenues and expenses.[19] Statements should include a breakdown of expenses, so that it is clear what amounts were allocated to program, fundraising and administrative expenses, including any joint cost allocations. The board should review these expenses to ensure that *at least* **seventy percent** of all expenses are for programs. The board should also review revenue to see how it measured up to budget predictions, and also what proportion was derived from special events, direct mail, corporate grants, government grants, etc., in order to judge the effectiveness of different fundraising efforts. In general the board should work to ensure that the agency's financial performance is in line with the projected goals listed in the approved annual budget.

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[17] Alliance for Nonprofit Management, *FAQ: What are some practical ways to strengthen governance?*

[18] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations*

[19] Maryland Association of Nonprofit Organizations, *Standards for Excellence: Financial and Legal*, p.7

Implementing Fiscal Controls

Strong fiscal controls can help prevent error, fraud and mismanagement and can improve funder confidence in an organization, by safeguarding assets and ensuring the reliability of financial records. The approval of clear financial policies, annual audits and quarterly financial statements are all ways in which the board of directors can establish controls over fiscal management. In addition to these measures, which have already been detailed, there are certain steps which can help prevent theft and fraud. First, assigning different people to the tasks of recording receipts and making bank deposits minimizes the risk of fraud and an unnoticed theft of funds. Also, at the disbursement level, it is important to require two signatures on all checks drawn on the charity's account. Finally, a clear and accurate system of accounting should help guarantee that that no discrepancies or mismanagement goes unnoticed by management or the board of directors.[20] A good reference for developing such a system is the book *Standards of Accounting and Financial Reporting for Nonprofit Health and Welfare Voluntary Organizations*, prepared by the National Assembly of Health and Human Service Organizations.

Fundraising

A nonprofit board of directors plays a key role in the organization's fundraising activities. According to Jan Masaoka of CompassPoint's newsletter Board Café, there are four crucial components to fundraising on the board:

1) As a body, the board is responsible for approving and monitoring performance of a revenue strategy that will sustain the organization's work.
2) In the context of that plan, as individuals, each board member must do something to help implement that strategy.
3) No one has to do everything, and

[20] CA Attorney General's *Guide for Charities*, pp.17-18

4) Expectations must be clearly and fairly communicated to new board members during the recruitment process.[21]

It is not always necessary for board members to raise money themselves, however if it is decided that this will be a board function, then such expectations should be communicated before members join the board and preferably some form of training should be provided to them.

Beyond helping to raise money for the organization, it is preferable that each board member makes a personal financial contribution, of an appropriate size, to the agency. Many funders will not support an organization unless 100% of board members make a donation—plus, in general, such contributions demonstrate a personal investment in the agency. The board should also establish policies and procedures to ensure that all fundraising materials and solicitations are accurate, truthful and include all pertinent agency information and that regular communication with donors is maintained. An additional policy should be created to guarantee that all donors are treated with respect and the degree of confidentiality they desire.[22] Lastly, the board should monitor whether the ratio of fundraising revenue to costs is at least around **3:1**, and it should develop a plan to increase revenues and decrease costs if that goal is not reached.[23]

V. Establishing and Distributing Conflict of Interest Statements

What is a conflict of interest?

A director has a conflict of interest if he or she is in a position to decide, vote or influence a matter in which he or she benefits or has some interest—be that personal, familial, financial or otherwise. Conflicts of interest present both legal and ethical problems for nonprofit organizations and this discussion focuses mainly

[21] Jan Masaoka, *Board Café*, 3/2002
[22] Whatcom Council of Nonprofits' *Best Practices for Executive Directors and Boards of Nonprofit Organizations*
[23] Maryland Association of Nonprofit Organizations, *Standards for Excellence: Fundraising*

on conflicts of interest as they relate to the law—though it should in no way be understood to be legal advice. The legal definition of a conflict of interest is also a minimum, not maximum, standard.

Examples of situations in which conflicts of interest could arise are varied. In one case, a director may own the facility that the agency uses to operate its programs. In another, the agency might be considering buying office supplies from a company that is affiliated with one of the directors or is owned by a family member of one of the directors. Neither of these circumstances is *inherently* illegal, that is, they do not necessarily fall within the legal definition of "conflict of interest", nor will they automatically lead to a conflict of interest. In fact, such situations are often unavoidable and are often merely a reflection of the fact that the agency's board is well connected and experienced in the field of the agency. Still, as will be described below, there are concrete measures that can be taken in order to avoid conflicts of interest from arising out of situations such as these and to prevent the significant harm to the organization that they can cause.

California State Law Regarding Conflicts of Interest

In most cases, directors on a nonprofit board cannot be held personally liable for the activities of the organization. However, certain situations may lead directors to be held personally liable where there is a "self-dealing transaction." Self-dealing transactions include "payment of a salary, contract fee, commission or other benefit of material economic value from the public benefit corporation to one or more of its directors, or to a corporation or partnership in which a director has a material financial interest."[24] When such transactions occur, they can be deemed either fair or not fair, depending on the surrounding circumstances and the manner in which the transaction was carried out.

[24] CA Attorney General's *Guide for Charities*, p.24

How to Avoid Conflict of Interest Liability

In order for a self-dealing transaction to be deemed fair in a court of law, certain steps must have been taken. First, there must have been a selection process in which the nonprofit "could not have obtained a more advantageous arrangement with reasonable effort under the circumstances."[25] It must be clear that the contract was based on a fair price and reasonable terms. Secondly, board action to approve such a deal must be taken with full knowledge of the director's affiliation and potential benefit, and the interested director's vote must not be counted. Such precautionary steps should be duly recorded in the minutes of the meeting in which the information was presented and the vote was taken. Finally, in order to prevent any future penalties, it is often advisable to obtain the approval of the state attorney general for the transaction beforehand. Such a request should be submitted in writing to (for Los Angeles County nonprofits):

Attorney General, Charitable Trusts Section
300 South Spring Street
Los Angeles, California 90013

The Attorney General will attempt to respond to such requests within sixty days of receiving the request and all related material facts.[26] If obtaining such prior approval is not feasible, it is advantageous to at least *notify* the attorney general of the potential self-dealing transaction, as it will at least limit the time frame in which a lawsuit can be filed (by other directors, members or the attorney general), to two years as opposed to ten.[27] Finally, even if all of the above procedures have been followed, the details of any self-dealing transaction involving more than $50,000 must be disclosed in an annual report. Due to all of these regulations, and the

[25] CA Attorney General's *Guide for Charities*, p.24
[26] CA Code of Regulations, Title 11, Div.1, Ch. 15 Att. Gen. Regulations Under Nonprofit Corporation Law; pp.1-2
[27] Mancuso, 2000

complications of such transactions, it is often advisable to consult with an attorney when entering into such a deal.

Why Conflicts of Interest Should Be Avoided

The legal consequences of conflicts of interest are that the individuals involved and the organization as a whole may face civil and even criminal penalties. Also, transactions that are deemed to have been improper can be voided. But there are significant non-legal impacts that such dealings can incur as well. Nonprofit boards should generally attempt to avoid even the *appearance* of a conflict of interest; as such appearances can reflect negatively on the organization and easily erode public confidence in the agency. Additionally, conflicts of interest can cause damage to employee morale by eroding employee confidence in the organization and its governance. Plus there can, of course, be financial losses to the organization if it didn't get the best deal it could get on a contract. Therefore, even if an attorney declares a deal to be legally free of a conflict of interest, the board should fully consider the other possible ramifications of self-dealing transactions.

Conflict of Interest Policies

It is advisable for the board to establish clear conflict of interest policies in the form of bylaws and a conflict of interest statement that is signed ***annually*** by all board members. In the bylaws, the procedures should be stated for board actions regarding any case where there is a potential conflict of interest. The bylaws should establish all of the following policies mentioned earlier:

- The interested director(s) should disclose all relevant information
- Careful consideration should be given to all alternative options
- The interested director(s) should not be allowed a vote

- Accurate minutes should be kept of all proceedings and ratified by the board
- Legal advice should be sought
- The attorney general's approval should be sought if appropriate

A few different samples of Conflict of Interest statements can be found in *Appendix E*.

VI. Compliance

Another way in which the board can help keep an agency out of legal trouble is by ascertaining that it is in full compliance with all relevant regulations and requirements. The board should therefore ensure that an internal review of the organization's compliance with relevant legal, regulatory and financial reporting requirements is conducted ***annually***. A summary of the results of this review should be presented to and approved by the entire board.[28] While the board need not conduct the review itself, a few websites on which one can find information on current regulations are:

- U.S. Department of Labor—Occupational Safety & Health Administration: www.osha.gov
- CA Environmental Protection Agency: www.cagold.ca.gov
- Official California Legislative Information: www.leginfo.ca.gov > California Law
- Corporations Code (> Search) > Nonprofit Public Benefit Corporations
- Nolo Law for All (a law information center): www.nolo.com >Small
- Business> Small Business Legal Structures> Nonprofit Corporations
- Nonprofit Law Center: www.nonprofitlawcenter.com

[28] The Minnesota Council of Nonprofits' *Governance: Basics*

VII. Insurance Coverage

Among the items that a nonprofit board must consider and periodically reassess is the organization's need for insurance coverage. An analysis of whether the agency should purchase insurance coverage should be made at the time of incorporation and only by the board of directors. After that, the need should be reassessed periodically in light of the current nature and extent of the organization's activities and its financial capacity.[29]

The two main types of insurance coverage that should be considered by most organizations are general liability insurance coverage and Directors and Officers liability insurance coverage. The Nonprofits Insurance Association of California (NIAC) provides the following summary of **general liability insurance coverage**:

> *This is typically the "core" coverage for a nonprofit. Be sure it is provided on an "occurrence" policy, not a "claims made" policy. The most common occurrence covered by the policy is "slip and fall." Depending on the extent of the general liability coverage purchased, commercial general liability insurance may provide coverage for a wide range of negligent acts which result in bodily injury, personal injury, advertising injury or property damage to a third party. It does not cover damage to property under your control.*

The following is NIAC's description of **Directors and Officers Liability Coverage**:

> *Directors and officers liability coverage is intended to cover damages resulting from the wrongful acts of the directors and officers of your nonprofit. Directors and officers liability coverage extends to types of claims that are not covered under the commercial general liability policy.*

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[29] The Minnesota Council of Nonprofits' *Governance: Basics*

Among the items a good directors and officers policy should include is broad coverage for all types of employment-related actions, including allegations of wrongful termination, harassment, discrimination and failure to hire. It should also pay for defense costs as they are incurred, not on a reimbursement basis.[30]

Additional details and other insurance options are provided on the NIAC's website at www.niac.org, under Resources—Frequently Asked Questions and at www.boardsource.org.

While Directors and Officers Liability Coverage is an important tool in protecting nonprofit boards from liability claims, it must be coupled with other risk management strategies. As discussed in the previous section, conflicts of interest are a very serious matter for nonprofit boards to consider, and there are many steps that must be taken to avoid them. But as directors are responsible for all aspects of a nonprofit organization's activities, there are many other liability issues to consider as well. There are organizations that are established to help nonprofits develop sound risk management strategies, such as the Nonprofit Risk Management Center—a national nonprofit that can be found on the web at www.nonprofitrisk.org. There are also numerous helpful articles on the web, which can be found through simple searches for "nonprofit risk management", or by checking with some of the organizations included in the Resource List at the end of this book.

VIII. Hiring, Setting Compensation for and Evaluating the Executive Director

Hiring an executive director (ED) can be a daunting task, as it requires a lot of research and background information. First, the board must make sure that they have an updated **job description** for the ED. Job descriptions allow a candidate to know what the job entails before they apply and to prepare themselves fully for the

[30] Nonprofit Insurance Association of California; *Frequently Asked Questions*; www.niac.org

responsibilities of the position. It is crucial to maintain a current job description, both in case of a change in ED and to use in evaluating the ED's performance. This description should be updated when changes in the organization take place. For a good template to use for creating an executive director's job description, or just for comparison, please refer to *Appendix F*.

There are many, often competing, objectives to consider when setting the compensation for the executive director. The board must attempt to attract strong candidates while staying within the organization's budget and the board should try to be fair to the candidates while at the same time coming to a consensus among the often varying opinions of the directors. Also, a board must remember that compensation can come in different forms, ranging from salary to benefits, retirement plans and paid leave.

Here are some suggested guidelines provided by Jan Masaoka at Board Café on how to determine appropriate compensation:

1) What salary makes this job competitive in the market for talent? To where is our executive director most likely to depart? If the answer is a similar nonprofit, look at the salaries of comparable nonprofits in the area. [But keep in mind that salaries at very similar nonprofits can be different by factors of 10 or more.] If the answer is government, look at the kinds of positions your ED might take, and what salary and benefits are being offered.
2) What salary is fair internally? How much are other employees making? How distant or how close do you think is appropriate?
3) What salary recognizes the contribution the ED will make in the coming year? Are performance expectations and demands increasing to the point where a higher salary seems warranted? Performance in the last year gives us the best clues about what the ED will do next year.
4) What signal do we want to send the executive director? Words are important, but so is money. Praising an executive director while keeping his or her

compensation flat ends up conveying a message that the board doesn't really value his or her work.

5) What are all the elements of compensation we can offer? Retirement plan contributions, extra time off, or other benefits may be important to the executive director.
6) Is our revenue/fundraising plan aggressive enough to allow us to afford appropriate salaries for the ED and all the staff? For too many boards (and EDs), it's easy to say "we can't afford to pay what we ought to." The board must insist that the organization's budget and plan for future funding (whether earned or donated money) include funds for appropriate compensation.

In order to find out information about nonprofit executive director salaries in comparable local organizations, there are several resources available:

- View for free the 990s of an organization, at the CA Attorney General's website: http://caag.state.ca.us under "Search for a Charity"
- Refer to Compasspoint's report: *Daring to Lead: Nonprofit Executive Directors and their Work Experience* (which also covers ED compensation), available for free in .pdf form at: www.compasspoint.org
- Order the Guidestar Nonprofit Compensation Report-- $160 for the State Report—at www.guidestar.org/services
- Purchase Abbott, Langer & Associates survey of compensation scales at over 2,600 nonprofits: www.abbott-langer.com
- Purchase the *Compensation and Benefits Survey* from the Center for Nonprofit Management at: www.cnmsocal.org

Finally, the board should ***annually*** carry out a written evaluation of the performance of the executive director.[31] This should be conducted with reference to the ED's job description and appropriate commendations and suggestions for improvement should be provided to him or her. It is often advisable to hire an

[31] Minnesota Council of Nonprofits' *Governance: Basics*

independent management evaluator that reports to the board, as board members usually can't interview staff about their opinions and it is risky to rely solely on information from the person being evaluated.[32]

IX. Setting Compensation for Staff

The board of directors should ***periodically*** review the *overall* compensation structure of the organization, in addition to the compensation of the executive director. This can be done by comparing the compensation scale of the agency with those of comparably sized agencies in areas with similar costs of living. The board should ensure that a livable hourly compensation is paid to all employees, whether full- or part-time. The board should make sure that sufficient funds are allocated to contribute to full-time permanent employees' benefits and retirement plans, where appropriate.[33] Finally the board should check the agency's compensation and benefits practices with the organization's listed policies and procedures. The CA Attorney General, Guidestar, Abbott, Langer & Associates and Center for Nonprofit Management resources listed above all possess information related to general compensation structures in addition to compensation of executive directors.

X. Recruiting and Training New Board Members

In recruiting board members it is important both to select candidates that fill agency needs and to ensure that all members are aware of and capable of carrying out their board responsibilities. In selecting candidates, the board should look to ensure that the board maintains a *diverse* membership that is *representative* of the community served. It should also try to recruit candidates that would fill the

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[32] Alliance for Nonprofit Management *Frequently Asked Questions: Practical Ways to Strengthen Governance*

[33] Minnesota Council of Nonprofits' *Governance: Basics*

agency's need for a *balance of governors and supporters*. That is, it is important to have a board that is composed of both people who are knowledgeable about agency operations, clients and governing in general and people who know philanthropists and are champions of the cause.

In order to ensure that all board members are aware of and capable of carrying out their responsibilities, it is first important to develop written job descriptions for board members and to make them available to all candidates before electing them. While the general responsibilities of the board have been listed thus far, it is important also to have a clear vision of how each individual on the board can help to carry out its functions. For sample board job descriptions, please refer to *Appendix G*. It is also important for board members to attend trainings when appropriate, to update and strengthen their governance skills.

For additional guidance on the role of a Board Chair in particular, see Susan Scribner's *Are You Chairing a Board by the Seat of Your Pants?*

XI. Self-Evaluation

Self-evaluation, extending to all aspects of the organization, should be an ongoing process of the board. In addition to *auditors*, *management* and *program evaluators* should report to the board. The management evaluators can review executive director performance, while program evaluators can conduct an assessment of both the processes and the outcomes of the agency's programs. An *overall evaluation* of the organization should occur no less than ***every two years*** with special attention paid to how outcomes compare to both the agency's mission and specific goals and objectives. A written report that outlines the results of the aforementioned performance and effectiveness assessment should be submitted to the board for its approval.

The board should also expect the ED to share the results of evaluations and monitoring contracts by its funders, particularly government funders. The ED

should, in particular, provide an explanation if such reports find money owed, corrective action required, or that the agency is not in good standing. The board should accordingly assess what future actions need to be taken in order to improve its effectiveness, with each of the above evaluation reports.

Procedures

I. Minutes

It is always important to have written meeting minutes reflecting the actions of the board, including reports of board committees when acting in the place of the board.[1] These minutes should be kept on file for a period of at least ***ten years***, which is the statute of limitation on suits by the Attorney General for breach of charitable trust.[2] They should regularly be distributed to the board and committee members for review before the next meeting takes place. It is important to make the minutes readable so that members are encouraged to review them. Remember that minutes need not contain every word said, but mainly what was *done*. The minutes should include the general information such as the date, the time and the names and titles of persons present. Then they should include, in a clear format, each item that was addressed and the *exact wording of each motion* made. Finally, it should include information about the location and time of the *next meeting* and the *signature of the secretary*. At the beginning of every board meeting, the minutes from the last meeting should be ratified.

These minutes should always be made available to funders upon request—a common practice that is done for the benefit of funders even on the federal level. Some funders require their availability and review during pre-decisional site visits.

II. Consent Agendas

A consent agenda is a practice by which all of the non-controversial and routine board items, such as the minutes of the previous meeting or committee

[1] Maryland Association of Nonprofit Organizations, *Standards for Excellence: Governing Body*
[2] James M. Cordi, Supervising Deputy Attorney General, CA Attorney General's office

reports, are set apart and approved as a single agenda item. Consent agendas generally occur at the beginning of a meeting and bring the advantage of allowing the board to quickly approve routine items (the process usually takes about five minutes) allowing them more time for the more pressing items in the agenda.[3] All board members should be given sufficient time before the meeting to review all materials to be included in the consent agenda, and if a single member objects to an item being placed in the consent agenda, then it must be held until later in the agenda for further discussion. Consent agendas should *not* be used to *hide* actions that will be controversial—to do so breaches the trust of the board and undermines the value of this practice.[4] Consent agendas can be a very useful tool for agencies with a high volume of routine business, allowing for meetings that are faster and more efficient.

III. Ad Hoc Committees

When there are a number of specific issues to be explored, it is often a more efficient use of board time to form ad hoc committees than for the entire board to examine each one as a whole. This strategy can be particularly useful when a board has developed a strategic plan in which core areas are identified for further research/deliberation. Ad hoc committees also can be helpful in preventing board member burn out, by allowing individuals to focus on and make progress in particular areas to which they are suited. One member of the board should chair each ad hoc committee and expectations of these chairs and the committees as a whole in examining these issues should be clearly outlined.[5]

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[3] Martha Golensky; *"Best Practices" in Board Governance: Implementing Changes that Make a Difference*; Grand Valley State University; 9/2000

[4] David O. Renz, Ph.D; *Consent Agenda*; A Board Resource Tool from the Midwest Center for Nonprofit Leadership

[5] Martha Golensky; *"Best Practices" in Board Governance: Implementing Changes that Make a Difference*; Grand Valley State University; 9/2000

IV. Board Advocates

Another valuable tool along the same lines as ad hoc committees is designating specific board members to advocate for sections or items in the strategic plan. This advocate would serve as a liaison between the board and the appropriate staff members and would not only bring progress reports to the board, but would also regularly raise key concerns and issues related to that part of the strategic plan. Assigning responsibility in this way can both free up general board tasks and allow members to focus on specific issues and thereby feel they are making a valuable contribution.

V. Board Secretary

Considering the many responsibilities that a board of directors possesses, it is important that the board does not get overwhelmed and slowed down by its many secretarial duties. Therefore it is often advisable for a nonprofit organization to hire a paid secretary to the board. A paid board secretary, who may only need to work a few hours a week, can act as the board's facilitator, reminder and educator.[6] The secretary can prepare and distribute the meeting minutes, manage general board correspondence, perform research upon request, make meeting arrangements and help support new officers with their responsibilities. Having such a staff person can make meetings run more efficiently and allow the board to govern more effectively.

[6] Alliance for Nonprofit Management *Frequently Asked Questions: Practical Ways to Strengthen Governance*

Resource List

Alliance for Nonprofit Management
www.allianceonline.org

Better Business Bureau Wise Giving Alliance
www.give.org

BoardSource
www.boardsource.org

CA Attorney General—Charitable Trusts Division
http://caag.state.ca.us/charities

Carver Policy Governance
http://carvergovernance.com

Center for Nonprofit Management
www.cnmsocal.org

Charities Review Council of Minnesota
www.crcmn.org

Compasspoint Nonprofit Services
www.compasspoint.org
(Includes links to *Board Café* and *Nonprofit Genie*)

Free Management Library
www.managementhelp.org

Internet Nonprofit Center
www.nonprofits.org
(Includes link to The Nonprofit FAQ)

Maryland Association of Nonprofit Organizations
www.marylandnonprofits.org

Midwest Center for Nonprofit Leadership
www.bloch.umkc.edu/mwcn

Minnesota Council of Nonprofits
www.mncn.org

Nolo Law for All
www.nolo.com

Nonprofit Insurance Association of California
www.niac.org

Nonprofit Law Center
www.nonprofitlawcenter.com

Nonprofit Risk Management Center
www.nonprofitrisk.org

Occupational Safety & Health Administration
www.osha.gov

Official California Legislative Information
www.leginfo.ca.gov

Whatcom Council of Nonprofits
www.whatcomnonprofits.org

Books

Paul C. Light; *Pathways to Nonprofit Excellence*; The Brookings Institute; 2002

Attorney Anthony Mancuso; *How to form a Nonprofit Corporation in California—9th Edition*; September 2000

Susan Scribner; *Are You Chairing a Board by the Seat of Your Pants?*; Scribner & Associates; Long Beach, CA; 1997

Appendix A

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Sample Bylaws
of
Name of Corporation

A California Public benefit corporation

ARTICLE 1
OFFICES

SECTION 1. PRINCIPAL OFFICE

The principal office of the corporation for the transaction of its business is located in (name of county) County, California.

SECTION 2. CHANGE OF ADDRESS

The county of the corporation's principal office can be changed only by amendment of these Bylaws and not otherwise. The Board of Directors may, however, change the principal office from one location to another within the named county by noting the changed address and effective date below, and such changes of address shall not be deemed an amendment of these Bylaws:
(Fill lines in below later, if and when address changes)

_____ Dated: _____, _____
_____ Dated: _____, _____
_____ Dated: _____, _____

SECTION 3. OTHER OFFICES

The corporation may also have offices at such other places, within or without the State of California, where it is qualified to do business, as its business may require and as the board of directors may, from time to time, designate.

ARTICLE 2
PURPOSES

SECTION 1. OBJECTIVES AND PURPOSES

The primary objectives and purposes of this corporation shall be:
(provide specific statement of your group's nonprofit purposes and activities)

_____
_____
_____

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ARTICLE 3
DIRECTORS

Section 1. number

The corporation shall have ___(number of directors)__directors and collectively they shall be known as the Board of Directors. The number may be changed by amendment of the Bylaw, or by repeal of this Bylaw and adoption of a new Bylaw, as provided in these Bylaws.

SECTION 5. COMPENSATION

Directors shall serve without compensation except that they shall be allowed and paid __("their actual and necessary expenses incurred in attending Directors meetings" or state other provisions allowing reasonable compensation for attending meetings)___. In addition, they shall be allowed reasonable advancement or reimbursement of expenses incurred in the performance of their regular duties as specified in Section 3 of this Article. Directors may not be compensated for rendering services to the corporation in any capacity other than director unless such other compensation is reasonable and is allowable under the provisions of Section 6 of the Article.

SECTION 8. REGULAR AND ANNUAL MEETINGS

Regular meetings of Directors shall be held on ___(date)__ at ___(time)---M, unless such day falls on a legal holiday, in which event the regular meeting shall be held at the same hour and place on the next business day.

If this corporation makes no provision for members, then, at the annual meeting of directors held on ___(date)___, directors shall be elected by the Board of Directors in accordance with this section. Cumulative voting by directors for the election of directors shall not be permitted. The candidates receiving the highest number of votes up to the number of directors to be elected shall be elected. Each director shall cast one vote, with voting being by ballot only.

SECTION 13. QUORUM FOR MEETINGS

A quorum shall consist of ___(state number or percentage e.g. "a majority of the Board of" Directors.

SECTION 15. CONDUCT OF MEETINGS
Meetings of the Board of directors shall be presided over by the Chairperson of the Board. Or, if no such person has been so designated or in his or her absence, the President of the corporation or, in his or her absence, by the Vice President of the corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the directors present at the meeting. The Secretary of the corporation shall act as secretary of all meetings of the board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the meeting. Meetings shall be governed by ___("Roberts' Rules of Order" or state other rules or procedures for conduct of directors' meeting)___, as such rules may be revised from time to time, insofar as such rules are not inconsistent with or in conflict with these Bylaws, with the Articles of Incorporation of this corporation, or with provisions of law.

ARTICLE 5
COMMITTEES

SECTION 1. EXECUTIVE COMMITTEE

The Board of Directors may, by a majority vote of directors, designate two (2) or more of its members (who may also be serving as officers of this corporation) to constitute an Executive Committee and delegate to such Committee any of the powers and authority of the board in the management of the business and affairs of the corporation, except with respect to:

(a) The approval of any action which, under law or the provisions of these Bylaws, requires the approval of the members or of a majority of all of the members.
(b) (b) The filling of vacancies on the board or on any committee which has the authority of the board.
(c) The fixing of compensation of the director for serving on the board or on any committee.
(d) (d) The amendment or repeal of Bylaws or the adoption of new Bylaws.
(e) (e) The amendment or repeal of any resolution of the board which by its express terms is not so amendable or repealable.
(f) The appointment of committees of the board or members thereof.
(g) The expenditure of corporate funds to support a nominee for director after there are more people nominated for director than can be elected.
(h) (h) The approval of any transaction to which this corporation is a party and in which one or more of the directors has a material financial interest, except as expressly provided in Section 5233(d)(3) of the California Nonprofit Public Benefit Corporation Law.

By a majority vote of its members then in office, the board may at any time revoke or modify any or all of the authority so delegated, increase or decrease but not below two (2) the number of its members, and fill vacancies therein from the members of the board. The Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the board from time to time as the board may require.

ARTICLE 8
FISCAL YEAR

SECTION 1. FISCAL YEAR OF THE CORPORATION

The fiscal year of the corporation shall begin on the ___(day and month e.g. "first day of January")__and end on the ___(day and month e.g. "last day of December")__ in each year.

ARTICLE 12
MEMBERS

SECTION 1. DETERMINATION OF MEMBERS

If this corporation makes no provision for members, then, pursuant to Section 5310(b) of the Nonprofit Public Benefit Corporation Law of the State of California, any action which would otherwise, under law or the provisions of the Articles of Incorporation or Bylaws of this corporation, require approval by a majority of all members or approval by the members, shall only require the approval of the Board of Directors.

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WRITTEN CONSENT OF DIRECTORS ADOPTING BYLAWS

We, the undersigned, are all of the persons named as the initial directors in the Articles of Incorporation of ___(name of corporation)___, a California nonprofit corporation, and, pursuant to the authority granted to the directors by these Bylaws to take action by unanimous written consent without a meeting, consent to, and hereby do, adopt the foregoing Bylaws, consisting of __(number of pages)__ pages, as the Bylaws of this corporation.

Dated: _____

___(signature of Director)_____
(typed name) , Director

_____
(typed name) , Director

_____
(typed name) , Director

_____
(typed name) , Director

_____
(typed name) , Director

CERTIFICATE

This is to certify that the foregoing is a true and correct copy of the Bylaws of the corporation named in the title thereto and that such Bylaws were duly adopted by the Board of Directors of said corporation on the date set forth below.
(Fill in Certificate date and signature of Secretary later, after first board meeting)

Date: ___(date)_____

_____(signature of Secretary)_____
(typed name) , Secretary

Special Instructions

1. Type the name of your corporation in the heading of the Bylaws.
2. Type the name of the county where the corporation's principal office is located. The principal office is the legal address of the corporation and, generally, fixes the county where legal action must be brought against the corporation.
3. The blanks in this section should not be filled in at this time. Use these blanks later to change the principal office of the corporation to another location, within the same county, by showing the new address and date of the address change.
4. This section allows you to state in more detail the primary objectives and purposes of your nonprofit corporation. (Remember, your statement of specific purposes in your Articles of Incorporation should have been brief.) Here you can go into as much detail as you want, describing the specific purposes and activities of your corporation. You can be brief here as well if you wish. We suggest, however, that you go into more detail here, listing the major purposes and activities in which you plan to engage. Doing this will give "insiders" a sense of certainty regarding the specific goals you intend to achieve and the means by which you plan to achieve them. A more detailed statement here will also serve to provide the State Franchise Board and the IRS with additional information in order for them to determine if the specific activities you plan to engage in entitle you to the necessary tax exemptions.

In all cases, you should refer back to Step 2, Section A, special instruction of this chapter and re-read the considerations listed there which you should take into account in preparing a statement of purposes—they apply here as well, although you don't need (and as we've said, probably won't want) to be brief.

EXAMPLE: Here's an example of an expanded list of objectives and purposes which might be used here for the same Educational-Dance Group we used as an example in preparing a short statement of specific purposes for this group's articles. If you compare this more detailed statement with the Educational-Dance Group example given above in Step 2, Section A, special instruction, we think you'll get the idea of what this Bylaw provision is meant to accomplish and how to prepare it.

Expect Future appearances by Our Mythical Dance Troup. We'll be using this hypothetical dance group in other sections of this book since it is illustrative of a large number of public benefit corporations which will derive tax-exempt revenue primarily from the performance of services related to their exempt purposes (rather than from grants, contributions and other sources of donative support).

Sample Response for an Educational Group

ARTICLE 2
PURPOSES
SECTION 1. OBJECTIVES AND PURPOSES
The primary objectives and purposes of this corporation shall be:

a) *To provide instruction in dance forms such as jazz, ballet, tap and modern dance;*
b) *To provide instruction in body movement and relaxation art forms such as tumbling, tai-chi and yoga;*
c) *To give public performances in dance forms and creative dramatics;*
d) *To sponsor special events involving the public performance of any or all of the above art forms as well as other performing arts by the corporation's performing troupe as well as by other community performing arts groups; and*
e) *To directly engage in and to provide facilities for others to engage in the promotion of the arts, generally.*

Indicate the total number of persons authorized to serve on your board. Generally, this number should be the same as the number of people you've already indicated as the first directors of the corporation in Article FIVE of the Articles of Incorporation. However, you may at this time state a greater number to allow for additional directors to be elected at a future meeting of the board.

Important Reminder: A majority of the board of a nonprofit public benefit corporation must be disinterested-generally, this means that a majority of the board must not be paid by the corporation or related to another person who is paid by the corporation.

EXAMPLE: If, as is often the case, three "active" directors also wish to work fulltime as salaried officers, you will need to provide for a seven-person board here, electing four additional directors who will not be paid (they can be paid only as directors, usually on a per meeting or other reasonable basis) and who are not related to any paid persons.

Variable Number of Board Members: A few groups may wish to change this section to provide for a range of numbers of directors, with the exact number to be later fixed by resolution of the board of directors.

EXAMPLE: For example, you may wish to retype this section to provide:

SECTION 1. NUMBER
The corporation shall have not less than two (2) nor more than five (5) directors, with the exact number to be fixed within these limits by approval of the Board of Directors or the members, if any, in the manner provided in these Bylaws.

Indicate in this blank any specific payments which will be allowed to board members for attending meetings of the board (note that reasonable advancement and reimbursement of expenses for performing other director duties is allowed by this section). You may indicate a specific per-meeting amount (or you may use the sample language shown in the blank on the sample form above to authorize payment of "actual and necessary" expenses incurred by directors in attending meetings, simply type "no payments authorized" in this blank.

Remember: Paying a director (a small amount) solely for attending board meetings does not make a director an "interested person" for purposed of Section 5227 of the Corporations Code.

Sample Responses:

Directors shall serve without compensation except that they shall be allowed and paid $50 for attending each meeting of the board of directors.

Directors shall serve without compensation except that they shall be allowed and paid no payment authorized.

In the blanks in the first paragraph, indicate the date and time when regular meetings of the board will be held. Many nonprofits hold regular board meetings while others simply schedule regular meetings once a year and call special meetings during the year when required. In any case, make sure to indicate that you will hold a regular board meeting at least annually in the blanks.

Sample Responses:

Regular meetings of Directors shall be held on the first Friday of each month at 9 o'clock AM…

Regular meetings of Directors shall be held on the second Monday of December at 1 o'clock PM…

Regular meetings of Directors shall be held on July 1st and February 20th at 9 o'clock AM…

In the second paragraph of this section, fill in the blank to indicate which one of your regular board meetings will be specified as the annual regular meeting of the board to elect (or re-elect) directors of your corporation. Note that in a non-membership corporation, the directors vote for their own re-election or replacements, with each director casting one written vote. Of course, if a corporation has provided for only one regular meeting each year in the first paragraph of this section, then the date of this regular meeting will be repeated in this blank as the date of the annual meeting of directors.

Sample Responses:

If this corporation makes no provision for members, then, at the annual meeting of directors held on January 1st, directors shall be elected…

If this corporation makes no provision for members, then, at the annual meeting of directors held on the first Friday of July, directors shall be elected…

Membership Note: the provisions in the second paragraph of this section only take effect for non-membership corporations-membership corporations can leave this line blank since they will add provisions to their Bylaws which specify that the members, not the directors, elect directors of the corporation.

Indicate the number of directors who must be present at a director meeting to constitute a quorum so that business can be conducted. Although the usual practice is to provide for a majority, a nonprofit public benefit corporation may provide for a larger or smaller number. However, there is a limit on how small a quorum you can provide for. Specifically, the Bylaws cannot provide for a quorum of less than one-fifth of the authorized number of directors (the number given in special instruction, above) or two, whichever is larger. Of course, one-director corporations may and will provide for a quorum of one director. For example, as seven-director corporation can't provide for a quorum of less than two directors, while a 15-director corporation must have at least a three-director quorum.

Whatever number or percentage you decide on, you should realize that this section of the Bylaws concerns a quorum, not a vote requirement. A meeting can only be held if at least a quorum of directors is present, but a vote on any matter before the board must, generally, be passed by the vote o f a majority of those present at the meeting.

> **EXAMPLE:** If a public benefit corporation with seven directors provides for a minimum quorum of two, and jut two directors hold a meeting, action can be taken by the unanimous vote of these two directors. However, if all seven directors attend the meeting, action must be approved by at least four directors (a majority of those present at the meeting.)

Many public benefit corporations may wish a less-than-majority quorum rule. One primary reason relates to the fact that these corporations must have a majority of "disinterested" directors on their board. Because of the presence of such disinterested persons on the board, many nonprofit public benefit corporations may wish a lower quorum requirement to ensure that meetings of directors can be held on a regular basis in case the corporation occasionally has difficulty in getting these non-salaried directors to attend board meetings on a regular basis.

In this blank indicate the rules of order which will be used at directors' meetings. Most nonprofits specify Roberts' Rules of Order here but you may indicate any set of procedures for proposing, approving and tabling motions that you wish (or, if you will have a small board, you can leave this line blank if you see no need to specify formal procedures for introducing and discussing items of business at your board meetings).

This section of the Bylaws applies to the establishment of an executive committee consisting of board members only-the California Nonprofit Corporation Law allows an executive committee of this sort much of the management power of the full board (as specified in this section of the bylaws). Although at least two board members must serve on this committee, in practice, most nonprofit corporations establish an executive committee of from three to five board members. Of course, you can set up other types of committees with or without board members (see Section 2 of this Article in the CD-ROM Bylaws).

Indicate the beginning and ending dates of the fiscal year of the corporation. The fiscal year of the corporation is the period for which the corporation keeps its books (it's accounting period) and will determine the corporation's tax year for purposes of filing certain tax returns and reports. It may be the calendar year from January 1 to December 31 (this is the usual case for nonprofits), or it may be what the IRS considers a true fiscal year consisting of a 12-month period ending on the last day of any month other than December, e.g., from July 1 to June 30.

Last Portion of Basis Public Benefit Bylaws: The last portion of the basic Bylaws (consisting of Article 12, Written Consent of Directors and the Certificate section) is only intended for *non-membership groups.* Membership public benefit corporations do not need to

fill in and use this last portion of the basic Bylaws-we show you how to add membership provisions to complete your Bylaws in Section C, below.

Section 1 of Article 12 makes it clear that the directors of non-membership corporations can take the place of members in taking any action which, under law, otherwise requires membership approval (in other words, the directors can act in place of the members in non-membership corporations).

Fill in the Written Consent of Directors paragraph, showing the name of the corporation and the number of pages in your final Bylaws. Type your directors' names (the directors named in your Articles) below the signature lines. After printing and dating the form, have each director sign the form.

The blanks following the Certificate at bottom of the Bylaws should not be filled in at this time. Your corporate Secretary will complete these blanks after the holding of the first meeting of your board.

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BYLAWS

of the

KLINGON LANGUAGE INSTITUTE

A Pennsylvania Nonprofit corporation

ARTICLE 1 – DEFINITIONS

SECTION 1.1 Definitions.

The following terms used in these Bylaws shall have the meanings set forth below.

A. "Act" means the Pennsylvania Nonprofit Corporation Law of 1988, as amended.
B. "Advisory Board" means the Advisory Board of the Corporation.
C. "Board" means the Board of Directors of the Corporation.
D. "Commonwealth" means the Commonwealth of Pennsylvania.
E. "Corporation" means Klingon Language Institute.
F. "Director" means an individual serving on the Board.

SECTION 1.2 Statutory Definitions.

Other capitalized terms used in these Bylaws shall have the applicable meanings set forth in Part II of Title 15 of the Pennsylvania Consolidated Statutes.

ARTICLE 2 – PURPOSES

SECTION 2.1 Purposes.

The purposes of the Corporation are educational, literary, and scientific, specifically: to promote the study and use of the Klingon Language as a means of further developing the sciences of linguistics, philology, computer science, psychology, and other fields of academic study; to provide educational instruction in the use of the Klingon language; to engage in the study and support of Klingon linguistics and culture; to provide a forum for discussion and the exchange of ideas regarding Klingon linguistics and culture; to prepare, in accordance with generally accepted educational methods, materials necessary or valuable in achieving the educational purposes of the Corporation and to distribute such materials in a manner distinguishable from that of ordinarily commercial distribution; and to engage in other lawful activities as will contribute to the foregoing purposes.

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ARTICLE 3 – OFFICES

The registered office of the Corporation shall be located in the Commonwealth. The Corporation may have any number of offices at such places as the Board may determine.

ARTICLE 4 – SEAL

SECTION 4.1 Seal.

The Seal of the Corporation shall be in such form as the Board may determine.

SECTION 4.2 Seal Not Required.

Except as otherwise required by statute, the affixation of the Seal shall not be necessary to the valid execution, assignment, or endorsement by the Corporation of any instrument in writing.

ARTICLE 5 – MEMBERSHIP

SECTION 5.1 No Members.

The Corporation shall have no "members" within the meaning of the Pennsylvania Nonprofit Corporation Law.

ARTICLE 6 – BOARD OF DIRECTORS

SECTION 6.1 Board of Directors.

The business and affairs of the Corporation shall be managed under the direction of the Board. The powers of the Corporation shall be exercised by, or under the authority of, the Board, except as otherwise provided by statute, these Bylaws, or a resolution of the Board.

SECTION 6.2 Qualification of Directors.

Each director shall be a natural person of full age who need not be a resident of the Commonwealth.

SECTION 6.3 Number and Election of Directors.

The Board shall consist of not fewer than one and not more than five Directors. The Directors shall be determined by the Board at the annual meeting of the Board. Each Director shall be elected for a perpetual term or for such other term as the Board may determine by resolution.

SECTION 6.4 Term of Office.

Each Director shall hold office until the expiration of the term for which he or she was elected and until his or her successor has been elected and qualified or his or her earlier death, resignation, or removal.

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SECTION 6.5 Procedure for Nomination of Candidates for Directors.

a. No person shall be eligible for election as a Director at a meeting of the Board unless he or she has been duly nominated in accordance with the procedures specified in paragraph (b) of this Section.
b. The President shall announce at the meeting of the Board the number of Directors to be elected at the meeting, shall declare the nominations of candidates for election as Director are open and shall call for nominations form the floor. Nominations may be made by any Director who is entitled to vote at the meeting. Nominations need not be seconded. After nominations have been made, the President shall, on motion, declare the nomination closed, and thereafter no further nominations may be made.

SECTION 6.6 Vacancies.

Vacancies in the Board, including vacancies resulting from an increase in the number of Directors, shall be filled by a majority of the remaining Directors though less than a quorum. Each person so elected shall be a Director to serve for the balance of the unexpired term.

SECTION 6.7 Removal of Directors.

Any Director may be removed from office without assigning any cause by the vote of a majority of the Board at any meeting of the Board.

SECTION 6.8 Resignations.

Any director may resign at any time by giving written notice to the Corporation. The resignation shall be effective upon receipt by the Corporation or at such subsequent time as may be specified in the notice of resignation.

SECTION 6.9 Compensation of Directors.

The Board shall have the authority to fix the compensation, including reimbursement of expenses, of Directors for their services as such.

SECTION 6.10 Voting Rights.

Every director shall be entitled to one vote in person or by proxy.

SECTION 6.11 Voting by Proxy.

Any absent director entitled to vote at any meeting of the Board may be represented and may vote at such meeting by a proxy authorized in writing. Such written authorization must specify the matter with respect to which the proxy is granted, must be signed and

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dated by the Director granting the proxy, and must be filed with the Secretary of the Corporation.

ARTICLE 7 – COMMITTEES

SECTION 7.1 Establishment and Powers.

The Board may, by resolution adopted by a majority of the Directors, establish one or more committees to consist of one or more Directors of the Corporation. Any such committee, to the extent provided in the resolution of the Board shall have and may exercise all of the powers and authority of the Board, except that no committee shall have any power or authority as to the following.

a. The filling of vacancies in the Board.
b. The adoption, amendment, or repeal of the Bylaws.
c. The amendment or repeal of any resolution of the Board.
d. Action on matters committed by the Bylaws or by resolution of the Board to another committee of the Board.

SECTION 7.2 Term.

Each committee of the Board shall serve at the pleasure of the Board.

SECTION 7.3 Committee organization.

Each committee shall keep regular minutes of its proceedings and report the same to the Board at each regular meeting. Each committee shall determine its own organization and times and places of meetings unless the Board otherwise directs.

ARTICLE 8 – MEETINGS OF DIRECTORS

SECTION 8.1 Place of Meetings.

Meetings of the Board may be held at such place within or without the Commonwealth as the board may appoint or as may be designated in the notice of the meeting.

SECTION 8.2 Annual Meeting.

Unless the Board provides by resolution for a different time and date, the annual meeting of the board, for the election of directors, the election of officers, or the transaction of any other business which may be brought before the meeting, shall be held the third Friday of July. If such a day is a legal holiday under the laws of the Commonwealth, the annual meeting shall be held on the next succeeding business day which is not a legal holiday under the laws of the Commonwealth.

Immediately after each election of Directors, the newly constituted Board shall meet without prior notice at the place where such election of Directors was held, or at any

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other place and time designated in a notice given as provided in section 11.1, for the purposes of the election of officers or the transaction of any other business.

SECTION 8.3 Regular Meetings.

Regular meetings of the board may be held at such place and time as shall be designated by standing resolution of the Board. If the date fixed for any such meeting is a legal holiday under the laws of the Commonwealth, the annual meeting shall be held on the next succeeding business day which is not a legal holiday under the laws of the commonwealth or at such other time as may be determined by resolution of the Board. At such meetings, the directors shall transact such business as may properly be brought before the meeting. Notice of the regular meetings need not be given.

SECTION 8.4 Special Meetings of the Board.

Special meetings of the Board may be called by the President or by any Director and shall be held at such time and place as shall be designated in the call for the meeting. Five days' notice of any special meeting shall be given to each Director pursuant to Section 11.1 or by telephone. Such notice shall state the time and place of such special meeting but need not state the purpose of the special meeting.

SECTION 8.5 Quorum.

A majority of the Directors shall constitute a quorum for the transaction of business. The acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board.

SECTION 8.6 Participation in Meetings

One or more Directors may participate in a meeting of the Board or a committee thereof by means of conference telephone, interactive computer network, or similar communications equipment by means of which all persons participating in the meeting can communicate with each other.

SECTION 8.7 Organization.

Every meeting of the Board shall be presided over by the President or, in the absence of the President, a chairman chosen by the President. The Secretary or, in the absence of the Secretary, a person appointed by the President, shall act as Secretary. The Treasurer or, in the absence of the Treasurer, a person appointed by the President, shall act as Treasurer.

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SECTION 8.8 Consent of Directors in Lieu of Meeting.

Any action which may be taken at a meeting of the Directors may be taken without a meeting, if a consent or consents in writing, setting forth the action so taken, shall be signed by all Directors and filed with the Secretary of the Corporation.

ARTICLE 9 – OFFICERS

SECTION 9.1 Number.

The officers of the Corporation shall include a President, a Secretary, and a Treasurer. The officers may include one or more Grammarian, Translation Officer, Education Officer, Editor, and such other officers as the Board may determine by resolution. Any number of offices may be held by the same person.

SECTION 9.2 Qualification of Officers.

The officers shall be natural persons, except that the Treasurer may be a corporation. The officers may be, but are not required to be, Directors of the Corporation.

SECTION 9.3 Election and Term of Office.

The officers of the corporation shall be elected by the Board at any meeting of the Board and each shall serve at the pleasure of the Board.

SECTION 9.4 Removal of Officers.

Any officer may be removed from office without assigning any cause, by a majority of the Board at any meeting of the Board.

SECTION 9.5 Resignations.

Any officer may resign at any time by giving written notice to the Corporation. The resignation shall be effective upon receipt by the Corporation or at such subsequent time as may be specified in the notice of resignation.

SECTION 9.6 The President.

The President shall be the chief executive officer of the Corporation and shall have general supervision over the business and operations of the corporation, subject to the control of the Board. The President shall execute, in the name of the Corporation, deeds, mortgages, bonds, contracts, and other instruments authorized by the board, except in cases where the execution thereof shall be expressly delegated by the board to some other officer or agent of the Corporation. In general, the President shall perform all duties incident to the office of president and such other duties as may be assigned by the Board.

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SECTION 9.7 The Secretary.

The Secretary shall attend all meetings of the Board. The Secretary shall record all votes of the
Board and the minutes of the meetings of the Board in a book or books to be kept for that purpose. The Secretary shall see that the required notices of meetings of the board are given and that all records and reports are properly kept and filed by the Corporation. The Secretary shall be the custodian of the Seal of the corporation and shall see that it is affixed to all documents to be executed on behalf of the Corporation under its Seal. In general, the Secretary shall perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board or the President.

SECTION 9.8 The Treasurer.

The Treasurer shall have custody of corporate funds and securities and shall keep full and accurate accounts of receipt and disbursements in books belonging to the corporation. The Treasurer shall have full authority to receive and give receipts for all money due and payable to the corporation, and to endorse checks, drafts, and warrants in its name and on its behalf and to give full discharge for the same. The Treasurer shall deposit all funds of the Corporation, except such as may be required for the current use, in such banks or other places of deposit as the Board may designate. In general, the Treasurer shall perform all duties incident to the office of Treasurer and such other duties as may be assigned by the Board or the President.

SECTION 9.9 Grammarian.

The Grammarian shall exercise general supervision over the use and publication of the Klingon language, including the overseeing of the implementation and application of consistent gram-matical standards. In general, the Grammarian shall perform all duties incident to the office of Grammarian and such other duties as may be assigned by the Board or the President.

SECTION 9.10 The Translation Officer.

The Translation Officer shall exercise general supervision over the translation of materials from and into the Klingon language. In general, the Translation officer shall perform all duties incidental to the office of Translation Officer and such other duties as may be assigned by the Board or the President.

SECTION 9.11 The Education Officer.

The Education Officer shall exercise general supervision over the educational programs, activities, or endeavors operated by the corporation. In general, the Education Officer shall perform all duties incidental to the office of Education Officer and such other duties as may be assigned by the Board or the President.

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SECTION 9.11 The Editor.

The Editor shall exercise general supervision over the production and publication of all academic journals or other similar publications relating to the Klingon language which are created and distributed by the corporation. In general, the Editor shall perform all duties incidental to the office of Editor and such other duties as may be assigned by the Board or the President.

ARTICLE 10 – ADVISORY BOARD

SECTION 10.1 Advisory Board.

The board may appoint an Advisory Board to counsel the Board with respect to matters relating to instruction of the Klingon language, grammatical practices and standards, development of educational materials, editorial policies of publications of the Corporation, publication of ancillary materials, and any other matters as may be determined by the Board.

SECTION 10.2 Election and Term of office.

The members of the Advisory Board shall be elected by the Board at any meeting of the Board and each shall serve at the pleasure of the Board.

SECTION 10.3 Removal of Members of the Advisory Board.

Any member of the Advisory Board may be removed from office without assigning any cause, by a majority vote of the Board at any meeting of the Board.

SECTION 10.4 Resignations.

Any member of the Advisory Board may resign at any time by giving written notice to the Corporation. The resignation shall be effective upon receipt by the Corporation or at such subsequent time as may be specified in the notice of resignation.

ARTICLE 11 – NOTICE

SECTION 11.1 Written Notice.

Whenever written notice is required to be given to any person, it may be given to such person, either personally or by sending a copy thereof by first class or express mail, postage prepaid, or by telegram (with messenger service specified), Telex, or TWX (with answer back received), or courier service, charges prepaid, or by facsimile transmission, to his or her address (or to his or her Telex, TWX, or facsimile number) appearing on the book of the corporation or, in the case of directors, supplied to him or the Corporation for the purpose of notice. If the notice sent by mail, telegraph, or courier service, it shall be

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deemed to have been given to the person entitled thereto when deposited in the United States mail, or with a telegraph office of courier service for delivery to that person or, in the case of Telex or TWX, when dispatched. A notice of meeting shall specify the place, day, and hour of meeting and any other information required by the Act. Except as other wise provided by the Act or these Bylaws, when a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting, or the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

SECTION 11.2 Waiver by Writing.

Whenever any written notice is required to be given, a waiver thereof in writing, signed by the person or persons entitled to the notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

SECTION 11.3 Waiver by Attendance.

Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

ARTICLE 13 – INDEMNIFICATION

SECTION 13.1 Indemnification.

The Corporation shall indemnify any director or office of the Corporation and who was or is a party or is threatened to be made a party to any proceeding (which shall include for the purposes of this Article any threatened, pending, or completed action, or other proceeding whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person was or is an authorized representative of the Corporation against expenses (which shall include for purposes of this Article attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.

SECTION 13.2 Advancement of Expenses.

The Corporation shall pay the expenses (including attorney's fees and disbursements) actually and reasonably incurred in defending a proceeding on behalf of any person entitled to indemnification under Section 13.1 in advance of the final disposition of such

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proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall

ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article. The financial ability to make such repayment shall not be prerequisite to the making of an advance.

SECTION 13.3 Security for Indemnification Obligations.

To further effect, satisfy, or secure the indemnification obligations provided herein or otherwise, the Corporation may maintain insurance, obtain a letter of credit, act as self-insurer, create a reserve, trust, escrow, cash collateral, or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the Corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon other terms and conditions as the Board shall deem appropriate.

SECTION 13.4 Reliance Upon Provisions.

Each person who shall act as a Director or officer of the Corporation shall be deemed to be doing so in reliance upon the rights of indemnification provided by this Article.

SECTION 13.6 Scope of Article.

All rights of indemnification under this Article shall be deemed a contract between the corporation and the person entitled to indemnification under this Article pursuant to which the Corporation and each such person intend to be legally bound. Any repeal, amendment, or modification hereof shall be prospective only and shall not limit, but may expand, any rights or obligations in respect of any proceeding whether commenced prior to or after such change to the extent such proceeding pertains to actions or failures to act occurring prior to such change.

ARTICLE 14 – ANNUAL REPORT

SECTION 14.1 Annual Report.

The President and Treasurer shall present the Board at its annual meeting a report, verified by the President and Treasurer or by a majority of the Board, showing in appropriate detail the following:

a) The assets and liabilities, including trust funds, of the Corporation as of the end of the fiscal year immediately preceding the date of the report.
b) The principal changes in assets and liabilities, including trust funds, during the year immediately preceding the date of the report.
c) The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, for the year immediately preceding the date of the report,

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including separate data with respect to each trust fund held by or for the Corporation.

d) The expenses or disbursements of the Corporation, for both general and restricted purposes, during the year immediately preceding the date of the report, including separate data with respect to each trust fund held by or for the corporation. The annual report of the Board shall be filed with the minutes of the annual meetings of the Board.

ARTICLE 15 – TRANSACTION OF BUSINESS

SECTION 15.1 Real Property.

The Corporation shall make no purchase of real property nor sell, mortgage, lease away, or otherwise dispose of its real property, unless authorized by the vote of two-thirds (2/3) of the Board. If the real property is subject to a trust, the conveyance away shall be free of trust and the trust shall be impinged upon the proceeds of such conveyance.

SECTION 15.2 Negotiable Instruments.

All checks or demands for money and notes of the Corporation shall be signed by such officer or officers as the Board may designate.

ARTICLE 16 CORPORATE RECORDS

SECTION 16.1 Corporate Records.

The Corporation shall keep at its registered office or at its principal place of business (a) an original or duplicate record of the proceedings of the Board, (b) the original or a copy of its Bylaws, including all amendments thereto to date, and (c) appropriate, complete, and accurate books or records of account.

ARTICLE 17 – AMENDMENTS

SECTION 17.1 Amendments.

The Bylaws of the Corporation may be amended by a majority vote of the Board at any meeting after written notice of such purpose has been given.

ARTICLE 18 – MISCELLANEOUS

SECTION 18.1 Fiscal Year.

The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December.

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SECTION 18.2 Number.

The singular when used in these Bylaws shall also refer to the plural, and vice versa, as appropriate.

SECITON 18.3 Headings.

Interpreting these Bylaws, the headings of articles shall not be controlling.

Appendix B

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Sample List of Personnel Policies

The following is a sample list of policies. Consider the following list to get an impression of some of the major policies in an organization. This list is by no means definitive for every organization. The policies developed by an organization depend on the nature and needs of the organization.

Work Schedule
Work day hours
Lunch periods
Holidays
Vacation
Sick time
Personal leave
Leave of absence
Severe weather
Jury duty

Hiring Procedures
Americans with Disabilities Act
Interviewing job candidates
Checking references
Offering employment

New Employee and Internal Orientation
New employee orientation – general information
Agency-wide new employee orientation
Return orientation
New employee and internal orientation checklist

Compensation
Paydays
Overtime and compensation time
Classifying employees as exempt or non-exempt
Salary ranges
Positioning pay within a salary range
Maintaining competitive salary information
Reclassifying positions
Salary review policy
Promotional increases
Withholding salary increase due to performance
Withholding salary increase due to leave of absence

Payroll Information & Timekeeping Procedures
Payroll information – General
Payroll information – Direct deposit procedures
Payroll information – Required and voluntary payroll deductions

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Timekeeping – General discussion of non-exempt and exempt employee classifications
Supervisor's signature

Benefits
Eligibility and general information
Types of available benefits
Medical insurance
Dental insurance
Disability insurance
Supervisory communication
Life insurance
Confidentiality note
Retirement plan
Social security
Employee advisory resource
Benefits coverage: Spouses, Domestic Partners, Children & Other Dependents

Workers' Compensation Information and Procedures
When there is an injury or accident on the job
What is covered under Worker's Compensation
Type of injury covered by Worker's Compensation insurance
Medical expenses resulting from a work-related injury
Resources available

Performance Assessment Procedures
Performance assessment cycle
Performance assessment process
Dealing with performance issues
Discipline: when the positive approach does not work
Separation from employment checklist
Communications by the supervisor regarding personnel issues
COBRA (Comprehensive Omnibus Budget Reconciliation Act)
Leave-taking procedures

Financial Management
Budget management
Capital expenditures
Supervisor's responsibilities in maintaining the budget
Operating management
Financial reporting

Supplementary Information
Discrimination or sexual harassment complaints
Complaints regarding programs or staff

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Data Practices
Policy
Procedures
Definitions
HIPAA compliance
Security of records
External releases
Internal releases
Use of data
Legal procedures
Destruction of records
Staff access

Appendix C

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Basic Guidelines for a Successful Planning Process

Written by Carter McNamara, MBA, PhD – applies to nonprofits and for-profits unless noted

Planning in its Larger Context – Working Backwards Through Any "System"
Before we jump into the typical phases in the standard "generic" planning process, let's stand back and minute and briefly look at the role of planning in its overall context. This is more than an academic exercise – understanding this overall context for planning can greatly help a reader to design and carry out the planning process in almost any planning application.

One of the most common sets of activities in management is planning. Very simply put, planning is setting the direction for something – some system – and then working to ensure the system follows that direction. Systems have inputs, processes, outputs and outcomes. To explain, inputs to the system include resources such as raw materials, money, technologies and people. These inputs go through a process where they're aligned, moved along and carefully coordinated, ultimately to achieve the goals set for the system. Outputs are tangible results produced by processes in the system, such as products or services for consumers. Another kind of result is outcomes, or benefits for consumers, e.g., jobs for workers, enhanced quality of life for customers, etc. Systems can be the entire organization, or its departments, groups, processes, etc.

Whether the system is an organization, department, business, project, etc., the process of planning includes planners working backwards through the system. They start from the results (outcomes and outputs) they prefer and work backwards through the system to identify the processes needed to produce the results. Then they identify what inputs (or resources) are needed to carry out the processes.

Quick Look at Some Basic Terms
Planning typically includes use of the following basic terms.

NOTE: It's not critical to grasp completely the accurate definitions of each of the following terms. It's more important for planners to have a basic sense for the difference between goals/objectives (results) and strategies/tasks (methods to achieve the results).

Goals
Goals are specific accomplishments that must be accomplished in total, or in some combination, in order to achieve some larger, overall result preferred from the system—for example, the mission of an organization. (Going back to our reference to systems, goals are *outputs* from the system.)

Strategies or Activities
These are the methods or processes required in total, or in some combination, to achieve the goals. (Going back to our reference to systems, strategies are *processes* in the system.)

Objectives
Objectives are specific accomplishments that must be accomplished in total, or in some combination, to achieve the goals in the plan. Objectives are usually "milestones" along the way when implementing the strategies.

Tasks
Particularly in small organizations, people are assigned various tasks required to implement the plan. If the scope of the plan is very small, tasks and activities are often essentially the same.

Resources (and Budgets)
Resources include the people, material, technologies, money, etc., required to implement the strategies or processes. The costs of these resources are often depicted in the form of a budget. (Going back to our reference to systems, resources are *input* to the system.)

Basic Overview of Typical Phases in Planning

Whether the system is an organization, department, business, project, etc., the basic planning process typically includes similar nature of activities carried out in similar sequence. The phases are carried out carefully or – in some cases – intuitively, for example, when planning a very small, straightforward effort. The complexity of the various phases (and their duplication throughout the system) depends on the scope of the system. For example, in a large corporation, the following phases would be carried out in the corporate offices, in each division, in each department, in each group, etc.

NOTE: Different groups of planners might have different names for the following activities and group them differently. However, the nature of the activities and their general sequence remains the same. ALSO, the following are *typical* phases in planning. They do not comprise the complete, ideal planning process.

1. Reference Overall Singular Purpose ("Mission") or Desired Result from System

During planning, planners have in mind (consciously or unconsciously) some overall purpose or result that the plan is to achieve. For example, during strategic planning, it's critical to reference the mission, or overall purpose, of the organization.

2. Take Stock Outside and Inside the System

This "taking stock" is always done to some extent, whether consciously or unconsciously. For example, during strategic planning, it's important to conduct an environmental scan. This scan usually involves considering various driving forces, or major influences, that might effect the organization.

3. Analyze the Situation

For example, during strategic planning, planners often conduct a "SWOT analysis". (SWOT is an acronym for considering the organization's Strengths and Weaknesses, and the Opportunities and Threats faced by the organization.) During this analysis, planners also can use a variety of assessments, or methods to "measure" the health of systems.

4. Establish Goals

Based on the analysis and alignment to the overall mission of the system, planners establish a set of goals that build on strengths to take advantage of opportunities, while building up weaknesses and warding off threats.

5. Establish Strategies to Reach Goals

The particular strategies (or methods to reach the goals) chosen depend on matters of affordability, practicality and efficiency.

6. Establish Objectives Along the Way to Achieving Goals

Objectives are selected to be timely and indicative of progress toward goals.

7. Associate Responsibilities and Timelines With Each Objective

Responsibilities are assigned, including for implementation of the plan, and for achieving various goals and objectives. Ideally, deadlines are set for meeting each responsibility.

8. Write and Communicate a Plan Document

The above information is organized and written in a document which is distributed around the system.

Acknowledge Completion and Celebrate Success

This critical step is often ignored – which can eventually undermine the success of many of your future planning efforts. The purpose of a plan is to address a current problem or pursue a development goal. It seems simplistic to assert that you should acknowledge if the problem was solved or the goal met. However, this step in the planning process is often ignored in lieu of moving on to the next problem to solve or goal to pursue. Skipping this step can cultivate apathy and skepticism – even cynicism – in your organization. Don't skip this step.

Guidelines to Ensure Successful Planning and Implementation

A common failure in many kinds of planning is that the plan is never really implemented. Instead, all focus is on writing a plan document. Too often, the plan sits collecting dust on a shelf. Therefore, most of the following guidelines help to ensure that the planning process is carried out completely and is implemented completely – or, deviations from the intended plan are recognized and managed accordingly.

Involve the Right People in the Planning Process

Going back to the reference to systems, it's critical that all parts of the system continue to exchange feedback in order to function effectively. This is true no matter what type of system. When planning, get input from everyone who will be responsible to carry out parts of the plan, along with representatives from groups that will be affected by the plan. Of course, people also should be involved if they will be responsible for reviewing and authorizing the plan.

Write down the Planning Information and Communicate it Widely

New managers, in particular, often forget that others don't know what the managers know. Even if managers do communicate their intentions and plans verbally, chances are great that others won't completely hear or understand what the manager wants done. Also, as plans change, and so it's extremely difficult to remember who is supposed to be doing what and according to which version of the plan. Key stakeholders (employees, management, board members, funders, investor, customers, clients, etc.) may request copies of various types of plans. Therefore, it's critical to write plans down and communicate them widely.

Goals and Objectives Should Be SMARTER

SMARTER is an acronym. In this case, a SMARTER goal or objective is:

Specific:

For example, it's difficult to know what someone should be doing if they are to pursue the goal to "work harder". It's easier to recognize "Write a paper".

Measurable:
It's difficult to know what the scope of "Writing a paper" really is. It's easier to appreciate that effort if the goal is "Write a 30-page paper".

Acceptable:
If I'm to take responsibility for the pursuit of a goal, the goal should be acceptable to me. For example, I'm not likely to follow the direction of someone telling me to write a 30-page paper when I also have five other papers to write. However, if you involve me in setting the goal so I can change my other commitments or modify the goal, I'm much more likely to accept pursuit of the goal as well.

Realistic:
Even if I do accept responsibility to pursue a goal that is specific and measurable, the goal won't be useful to me or others if, for example, the goal is to "Write a 30-pate paper in the next 10 seconds".

Timeframe:
It may mean more to others if I commit to a realistic goal to "Write a 30-page paper in one week". However, it'll mean more to others (particularly if they are planning to help me or guide me to reach the goal) if I specify that I will write one page a day for 30 days, rather than including the possibility that I will write all 30 pages in the last 30-day period.

Extending:
The goal should stretch the performer's capabilities. For example, I might be more interested in writing a 30-page paper if the topic of the paper or the way I write it will extend my capabilities.

Rewarding:
I'm more inclined to write the paper if the paper will contribute to an effort in such a way that I might be rewarded for my effort.

Build in Accountability (Regularly Review Who's Doing What and by When)
Plans should specify who is responsible for achieving each result, including goals and objectives. Dates should be set for completion of each result, as well. Responsible parties should regularly review the status of the plan. Be sure to have someone of authority "sign off" on the plan, including putting their signature on the plan to indicate they agree with and support its contents. Include responsibilities in policies, procedures, job descriptions, performance review processes, etc.

Note Deviations from the Plan and Replan accordingly
It's OK to deviate from the plan. The plan is not a set of rules. It's an overall guideline. As important as following the plan is, it is also important to notice deviations and adjusting the plan accordingly.

Evaluate Planning Process and the Plan
During the planning process, regularly collect feedback from participants. Do they agree with the planning process? If not, what don't they like and how could it be done better? In large, ongoing planning processes (such as strategic planning, business planning, project planning, etc.), it's critical to collect this kind of feedback regularly.

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During regular reviews of implementation of the plan, assess if goals are being achieved or not. If not, were goals realistic? Do responsible parties have the resources necessary to achieve the goals and objectives? Should goals be changed? Should more priority be placed on achieving the goals? What needs to be done?

Finally, take 10 minutes to write down how the planning process could have been done better. File it away and read it the next time you conduct the planning process.

Recurring Planning Process is at Least as Important as Plan Document
Far too often, primary emphasis is placed on the plan document. This is extremely unfortunate because the real treasure of planning is the planning process itself. During planning, planners learn a great deal from ongoing analysis, reflection, discussion, debates and dialogue around issues and goals in the system. Perhaps there is no better example of misplaced priorities in planning than in business ethics. Far too often, people put emphasis on written codes of ethics and codes of conduct. While these documents certainly are important, at least as important is conducting ongoing communications around these documents. The ongoing communications are what sensitize people to understanding and following the values and behaviors suggested in the codes.

Nature of the Process Should Be Compatible to Nature of Planners
A prominent example of this type of potential problem is when planners don't prefer the "top down" or "bottom up", "linear" type of planning (for example, going from general to specific along the process of an environmental scan, SWOT analysis, mission/vision/values, issues and goals, strategies, objectives, timelines, etc.) There are other ways to conduct planning.

Critical – But Frequently Missing Step – Acknowledgement and Celebration of Results
It's easy for planners to become tired and even cynical about the planning process. One of the reasons for this problem is very likely that far too often, emphasis is placed on achieving the results. Once the desired results are achieved, new ones are quickly established. The process can seem like having to solve one problem after another, with no real end in sight. Yet when one really thinks about it, it's a major accomplishment to carefully analyze a situation, involve others in a plan to do something about it, work together to carry out the plan and actually see some results. So acknowledge this – celebrate your accomplishment!

Appendix D

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Basic Overview of Various Strategic Planning Models

Written by Carter McNamara, MBA, PhD

There is no one perfect strategic planning model for every organization. Each organization ends up developing its own nature and model of strategic planning, often by selecting a model and modifying it as they go along in developing their own planning process. The following models provide a range of alternatives from which organizations might select an approach and begin to develop their own strategic planning process. Note that an organization might choose to integrate the models, e.g., using a scenario model to creatively identify strategic issues and goals, and then an issues-based model to carefully strategize to address the issues and reach the goals.

The following models include: "basic" strategic planning, issue-based (or goal-based), alignment, scenario, and organic planning.

Model One – "Basic" Strategic Planning

This very basic process is typically followed by organizations that are extremely small, busy, and have not done much strategic planning before. The process might be implemented in year one of the nonprofit to get a sense of how planning is conducted, and then embellished in later years with more planning phases and activities to ensure well-rounded direction for the nonprofit. Planning is usually carried out by top-level management. The basic strategic planning process includes:

1) Identify your purpose (mission statement) – this is the statement(s) that describes why your organization exists, i.e., its basic purpose. The statement should describe what client needs are intended to be met and with what services—the type of communities are sometimes mentioned. The top-level management should develop and agree on the mission statements. The statements will change somewhat over the years.

2) *Select the goals your organization must reach if it is to accomplish your mission* – Goals are general statements about what you need to accomplish to meet your purpose, or mission, and address major issues facing the organization.

3) *Identify specific approaches or strategies that must be implemented to reach each goal* – The strategies are often what change the most as the organization eventually conducts more robust strategic planning, particularly by more closely examining the external and internal environments of the organization.

4) *Identify specific action plans to implement each strategy* – These are the specific activities that each major function (for example, department, etc.) must undertake to ensure it's effectively implementing each strategy. Objectives should be clearly worded to the extent that people can assess if the objectives have been met or not. Ideally, the top management develops specific committees that each have a work plan, or set of objectives.

5) *Monitor and update the plan* - Planners regularly reflect on the extent to which the goals are being met and whether action plans are being implemented. Perhaps the most important indicator of success of the organization is positive feedback from the organization's customers.

Note that organizations following this planning approach may want to further conduct step 3 above to the extent that additional goals are identified to further developing the central operations or administration of the organization, e.g., strengthen financial management.

Model Two – Issue-Based (or Goal-Based) Planning
Organizations that begin with the "basic" planning approach described above, often evolve to using this more comprehensive and more effective type of planning. The following table depicts a rather straightforward view of this type of planning process.

Summary of issue-Based (or goal-Based) Strategic planning
(note that an organization may not do all of the following activities every year.)

1) External/internal assessment to identify "SWOT" (Strengths and Weaknesses and Opportunities and Threats)
2) Strategic analysis to identify and prioritize major issues/goals
3) Design major strategies (or programs) to address issues/goals
4) Design/update vision, mission and values (some organizations may do this first in planning)
5) Establish action plans (objectives, resource needs, roles and responsibilities for implementation)
6) Record issues, goals, strategies/programs, updated mission and vision, and action plans in a Strategic Plan document, and attach SWOT, etc.
7) Develop the yearly Operating plan document (from year one of the multi-year strategic Plan)
8) Develop and authorize Budget for year one (allocation of funds needed to fund year one)
9) Conduct the organization's year-one operations
10) Monitor/Review/Evaluate/Update Strategic Plan document

Model Three – Alignment Model
This approach might be used in conjunction with other models to ensure planners truly undertake strategic thinking. The model may be useful, particularly in identifying strategic issues and goals.

1) The planning group outlines the organization's mission, programs, resources, and needed support.
2) Identify what's working well and what needs adjustment.
3) Identify how these adjustments should be made.
4) Include the adjustments as strategies in the strategic plan.

Model Four – Scenario Planning
This approach might be used in conjunction with other models to ensure planners truly undertake strategic thinking. The model may be useful, particularly in identifying strategic issues and goals.

1) Select several external forces and imagine related changes which might influence the organization e.g., change in regulations, demographic changes, etc. Scanning the newspaper for key headlines often suggests potential changes that might effect the organization.
2) For each change in force, discuss three different future organizational scenarios (including best case, worst case, and OD/reasonable which might arise with the

organization as a result of each change. Reviewing the worst-case scenario often provokes strong motivation to change the organization.

3) Suggest what the organization might do, or potential strategies, in each of the three scenarios to respond to each change.
4) Planners soon detect common considerations or strategies that must be addressed to respond to possible external changes.
5) Select the most likely external changes to effect the organization, e.g., over the next three to five years, and identify the most reasonable strategies the organization can undertake to respond to the challenge.

Model Five – "Organic" (or Self-Organizing) Planning

Traditional strategic planning processes are sometimes considered "mechanistic" or "linear," i.e., they're rather general-to-specific or cause-and-effect in nature. For example, the processes often begin by conducting a broad assessment of the external and internal environments of the organization, conducting a strategic analysis ("SWOT" analysis), narrowing down to identifying and prioritizing issues, and then developing specific strategies to address the specific issues.

Another view of planning is similar to the development of an organism, i.e., an "organic," self-organizing process. Certain cultures, e.g., Native American Indians, might prefer unfolding and naturalist "organic" planning processes more than the mechanistic, linear processes. Self-organizing requires continual reference to common values, dialoguing around these values, and continued shared reflection around the systems current processes. General steps include:

1) Clarify and articulate the organization's cultural values. Use dialogue and story-boarding techniques.
2) Articulate the group's vision for the organization. Use dialogue and story-boarding techniques.
3) On an ongoing basis, e.g., once every quarter, dialogue about what processes are needed to arrive at the vision and what the group is going to do now about those processes.
4) Continually remind yourself and others that this type of naturalistic planning is never really "over with," and that, rather, the group needs to learn to conduct its own values clarification, dialogue/reflection, and process updates.
5) Be very, very patient.
6) Focus on learning and less on method.

As the group to reflect on how the organization will portray its strategic plans to stakeholders, etc., who often expect the mechanistic, linear: plan formants.

Appendix E

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Sample Conflict of Interest Statement

For Officers, Directors, Committee Members, Staff Members, Faculty, and certain Consultants

No member of the _____Board of Directors, or any of its Committees shall derive any personal profit or gain, directly or indirectly, by reason of his or her participation with the organization. Each individual shall disclose any personal interest which he or she may have in any matter pending before the organization and shall refrain from participation in any decision on such matter.

Any member of the _____Board, any Committee, Consultant, or Staff who is also an officer, board member, committee member, or staff member of a borrower, loan applicant, contractor, vendor, or supplier of or to _____, shall immediately identify his or her affiliation which such agency or agencies. Further, in connection with any committee or board action specifically directed to that agency, he/she shall not participate in the decision affecting that agency and the decision must be made and/or ratified by the full board.

Any member of the _____Board, any Committee, Staff, Consultant, or Faculty member shall refrain from obtaining any list of _____clients for personal or private solicitation purposes at any time during the term of their affiliation.

At this time, I am a Board member, a committee member, consultant to, or employee of the following organizations:

_____

_____

_____

Now this is to certify that I, except as described below, am not now nor at any time during the past year have been:

1) A participant, directly or indirectly, in any arrangement, agreement, investment, or other activity with any vendor, supplier, or other party; doing business with _____which has resulted or could result in personal benefit to me.
2) A recipient, directly or indirectly, of any salary payments or loans or gifts of any kind or any free service or discounts or other fees from or on behalf of any person or organization engaged in any transaction with _____.

Any exceptions to 1 or 2 above are stated below or attached with a full description of the transactions and of the interest, whether direct or indirect, which I have (or have had during the past year) in the persons or organizations having transactions with _____.

Date _____ Signature _____

Printed _____

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Sample Conflict of Interest Policy

By Jan Masaoka

At some point, most boards confront tension or conflict between the interests of the organization and the interests of an individual board member. For example, if your organization is hiring a new bookkeeper and the board president recommends his sister, other board members may (and should) question whether this is appropriate. On one hand, the board president's sister is an experienced bookkeeper who, because of her personal connection to the organization, will be particularly committed to the work. On the other hand, the executive director may be reluctant to supervise the board president's sister.

Conflicts of interest are difficult to weigh and balance because the relationships between board members and the community also are a part of the contribution that board members make to the agency. If the organization is buying a new computer, for example, and a board member owns a computer store, the organization may well benefit from discounts and extra service by buying the computer at her store. It would be a mistake to prohibit working with board members as vendors. Similarly, board members who are also clients of the organization can be tremendously helpful in ensuring that a client perspective is brought into decision-making, but a client board member may find himself in a difficult position if the agency is considering eliminating a service that is used by very few clients other than himself. In many cases, the perceived conflict of interest may simply "feel wrong" to some board members, although it might be within legal boundaries.

Three simple safeguards can go a long way towards preventing and avoiding conflicts of interest. First, establish a policy related to conflict of interest which is signed by all board members when they join the board. The statement can be a simple declaration or require detailed information about the board members' financial interest. Second, establish disclosure as a normal practice. Board members should find it customary for someone to announce, for example, "I have started to date the Clinic Director and, as a result, feel that I must resign from the board. I would like to continue as a member of the Fundraising Committee, but not as a board member." In another situation a board president might say, "This next agenda item relates to joining a collaboration with other children's agencies. I'm going to ask board members who are also on one of these other boards to identify themselves and participate in the discussion, but I will excuse them from the room for part of the discussion and for the vote." Such disclosures should be recorded in the meeting's minutes.

Perhaps even more than written policies, board and staff leadership must establish by example and attitude and atmosphere of personal integrity. Some situations may need only a brief, informal comment to maintain that climate (example: "I know it's only $24 but it's important to keep our finances straight"). In others, a decision may be delayed because of the need to ensure that it has been made in the organization's best interests. Each of us, by our daily words and actions, contributes to a culture of integrity and responsibility.

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Sample Conflict of Interest Policy

The standard of behavior at the ____ Organization is that all staff, volunteers, and board members scrupulously avoid conflicts of interest between the interests of the ____Organization on one hand, and personal, professional, and business interests on the other. This includes avoiding potential and actual conflicts of interest, as well as perceptions of conflicts of interest.

I understand that the purposes of this policy are to protect the integrity of the _____Organization's decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputations of volunteers, staff and board members. Upon or before election, hiring or appointment, I will make a full, written disclosure of interest, relationships, and holdings that could potentially result in a conflict of interest. This written disclosure will be kept on file and I will update it as appropriate. I understand that the purposes of this policy are to protect the integrity of the ____Organization's decision-making process, to enable our constituencies to have confidence in our integrity, and to protect the integrity and reputations of volunteers, staff and board members. Upon or before election, hiring or appointment, I will make a full, written disclosure of interests, relationships, and holdings that cold potentially result in a conflict of interest. This written disclosure will be kept on file and I will update it as appropriate.

In the course of meetings or activities, I will disclose any interests in a transaction or decision where I (including my business or other nonprofit affiliations), my family and/or my significant other, employer, or close associates will receive a benefit or gain. After disclosure, I understand that I will be asked to leave the room for the discussion and will not be permitted to vote on the question.

I understand that this policy is meant to supplement good judgment, and I will respect its spirit as well as its wording.

Signed: Date:

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Code of Conduct
XYZ Organization

I. Introduction

The _____is a publicly-supported charitable foundation serving the communities of _____, and _____Counties, North Carolina, and is dedicated to its mission of expanding private philanthropy in those communities. The Foundation operated within the public trust, and strives to maintain the highest code of conduct in all of its operations.

The _____recognizes that it can best accomplish its mission when the Board of Directors, volunteer committee members, staff, and other groups associated with the _____represent the diverse interests, cultures, occupations, and expertise of the community. Thus, the _____recognizes that members of the Board of Directors and others representing or affiliated with the _____will from time to time face possible conflicts of interest or situations in which the appearance of conflict of interest could be detrimental to the _____and the communities it serves. The _____adopts this code of Conduct in recognition of its responsibility to the public trust, in recognition of the importance of fairness and objectivity in its conduct of business, as a means of assuring that every decision of the _____is made in the interest of the _____and the communities it serves and as a means of publicly codifying its expectations of Board, staff, and volunteers an others serving the _____.

II. General Policies and Expectations

Members of the _____are expected to commit themselves to ethical and professional conduct. This includes the proper use of authority and appropriate decorum.

Members must represent unconflicted loyalty to the interest of the _____. This accountability supersedes any conflicting loyalty such as that to advocacy or interest groups, business interests, personal interests, or paid or volunteer service to other organizations. Is also supersedes the personal interest of any staff or volunteer member acting as a consumer or client of the _____'s services.

It is the policy of the _____that no Member shall derive any personal profit or gain, directly or indirectly, by reason of his or her service to the _____.

There may be no self-dealing or any conduct of private business or personal services between any Member and the _____except those conducted in an open, and objective manner to ensure equal competitive opportunity and equal access to information.

Board members or volunteer committee members must not use their positions to obtain employment in the _____for themselves, family members or close associates. Should a Board or volunteer committee member desire employment, he or she must first resign.

Board and volunteer committee members may not attempt to exercise individual authority over the policies and operations of the _____except through their roles as voting members of the Board or volunteer committees. Staff members may not attempt to exercise individual authority over the policies and operations of the _____except through their specific job responsibilities and established supervisory structure.

Board members and volunteer committee members in their interaction with the press and the public must recognizes the inability of any individual member of the Board or Committee to speak for the _____except as expressly authorized by the Board Chairman. Staff members in their interactions with the press and the public must recognize the inability of any individual staff member to speak for the _____except as expressly authorized by the Executive Director.

The _____will comply with both the letter and spirit of all public disclosure requirements, including the open availability of its form 990 tax return. However, all Members must hold strictly confidential all issues of a private nature, including, but not limited to, issues related to private businesses, contributions from individuals, businesses, and other private entities, and all personnel matters.

III. Policies on Conflict of Interest

In conducting the affairs of the _____, duality or conflict of interest shall be presumed when a person to whom this policy applies or a member of his/her immediate family serves as a trustee, officer, staff member, or holder of more than 10% of corporate stock of an affected organization or firm; has a formal affiliation or interest in an affected organization or firm; or could expect financial gain or loss from a particular decision.

Before a staff, Board, or volunteer committee member begins his or her service with the _____, he or she shall file with the Executive Director of the _____a list of his or her principal business activities, as well as involvement with other charitable and business organizations, vendors, or business interests, or with any other associations that might produce a conflict of interest.

In addition to the disclosure required by the previous paragraph, each Member is under an obligation to the _____, to his or her fellow staff or volunteers, and to the community served by the _____to inform the _____of any position he or she hold or of any business or a vocational activity which may result in a possible conflict of interest or bias for or against a particular grantee, action, or policy, at the time such grant, action, or policy is under

consideration by the Board or any volunteer committee of the _____. Any duality or possible conflict of interest on the part of any Member shall be disclosed to the

Chairman of the Board (in the case of volunteers) or the Executive Director (in the case of staff members) and made a matter of record as soon as the issue in question is raised and a possible conflict is known.

When the Board, committee, or staff is to decide upon an issue about which a Member has an unavoidable conflict of interest, that Member shall physically absent herself or himself without comment from not only the vote, but also from the deliberation, unless directly requested by the Chairman of the board or relevant committee to provide factual information or answer factual questions that may assist the Board or Committee in making a wise decision. In no case shall that Member vote on such matter or attempt to exert personal influence in connection therewith.

Disclosure and abstention shall be recorded in the minutes of the meeting(s) at which the issue is discussed and decided.

In any situation not specifically covered by the previous sections of this policy, Members shall consider carefully any potential conflict of their personal interest with the interests of the _____and refrain from any action which might be perceived as an actual or apparent conflict of interest.

IV. Examples of Appropriate Actions Under This Code of Conduct

Example 1. An officer or other paid employee of a bank or other financial institution who is also a Board or Finance Committee member of the _____ should inform the Chairman of the Board of his or her potential conflict of interest and abstain from discussing or voting on the retaining, employing, or dismissing of his or her financial institution as an investment manager of the _____.

Example 2. A Board or Distributions Committee member who is also a Board, staff, or Committee member of a proposed grantee should inform the Chair of his or her conflict of interest and abstain from voting on or discussing any motion for or against the proposed grant, except as expressly requested by the Chair to provide factual information or answer factual questions that would be useful to the Board or Committee in its decision-making. If several grants are being voted upon concurrently, the Board or committee member must voice his or her conflict of interest to the Chair before the vote so that a vote on the grant with which there is a conflict may be taken separately.

Example 3. A Board or Committee member whose personal financial interests could be positively or adversely affected by the _____'s accepting, holding, or disposing of a particular gift from a donor or by knowledge of

the gift should inform the Chairman of his or her potential conflict of interest; refrain from seeking, obtaining, or reviewing non-public information about the gift; and abstain from discussing or voting on acceptance of the gift.

V. Duties of the Board Chairman and the Executive Director

The Chairman of the Board shall be responsible for the application and interpretation of the Code of Conduct as they relate to Board members, volunteer committee members, or the Executive Director. The Executive Director shall be responsible for the application and interpretation of the above policies as they relate to members of the _____'s staff.

VI. Duties of Members

Each Member has the affirmative responsibility to report to the Board Chair (in the case of concerns related to Board or committee members or the Executive Director) or to the Executive Director (in the case of concerns related to members of the staff) any and all knowledge of any action or conduct that appears to be contrary to this Code of Conduct.

Appendix F

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Sample Executive Director Job Description from Board Café

If you're writing or rewriting a job description, it may be helpful to have one for comparison. I've taken my job description as executive director of CompassPoint Nonprofit Services – one of the Board Café's co-publishers – and made it a bit more "generic" to serve as a template. Whatever job description you use, test to see that it both provides everyday guidance for the executive director and can serve as an evaluation tool at the end of the year. AND be sure to revisit and revise the job description as the job and the organization change.

Executive Director

The Executive Director is the Chief Executive Officer of _____. The Executive Director reports to the Board of Directors, and is responsible for the organization's consistent achievement of its mission and financial objectives. In program development and administration, the Executive Director will:

Specific committee responsibilities:

1. Assure that the organization has a long-range strategy which achieves its mission, and toward which it makes consistent and timely progress.

2. Provide leadership in developing program, organizational and financial plans with the Board of Directors and staff, and carry out plans and policies authorized by the board.

3. Promote active and broad participation by volunteers in all areas of the organization's work.

4. Maintain official records and documents, and ensure compliance with federal, state and local regulations.

5. Maintain a working knowledge of significant developments and trends in the field.

In communications, the Executive Director will:

1. See that the board is kept fully informed on the condition of the organization and all important factors influencing it.

2. Publicize the activities of the organization, its programs and goals.

3. Establish sound working relationships and cooperative arrangements with community groups and organizations.

4. Represent the programs and point of view of the organization to agencies, organizations, and the general public.

In relations with staff, the Executive Director will:

1. Be responsible for the recruitment, employment, and release of all personnel, both paid staff and volunteers.

2. Ensure that job descriptions are developed, that regular performance evaluations are held, and that sound human resource practices are in place.

3. See that an effective management team, with appropriate provision for succession, is in place.

4. Encourage staff and volunteer development and education, and assist program staff in relating their specialized work to the total program of the organization.

5. Maintain a climate which attracts, keeps, and motivates a diverse staff of top quality people.

In budget and finance, the Executive Director will:

1. Be responsible for developing and maintaining sound financial practices.

2. Work with the staff, Finance Committee, and the board in preparing a budget; see that the organization operates within budget guidelines.

3. Ensure that adequate funds are available to permit the organization to carry out its work.

4. Jointly, with the president and secretary of the board of directors, conduct official correspondence of the organization, and jointly, with designated officers, execute legal documents.

Many national and local organizations are willing to share their ED job descriptions with others. It's worth a call or two to friends on other boards to see if they have good ones to share…or to encourage them to develop a job description if there isn't a recent one in place!

Appendix G

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Sample Job Descriptions for Members of Boards of Directors

Board Chair Job Description

1. Is a member of the Board.
2. Serves as the Chief Volunteer of the organization (nonprofit only).
3. Is a partner with the Chief Executive in achieving the organization's mission.
4. Provides leadership to the Board of Directors, who sets policy and to whom the Chief Executive is accountable.
5. Chairs meetings of the board after developing the agenda with the Chief Executive.
6. Encourages Board's role in strategic planning.
7. Appoints the chairpersons of committees, in consultation with other Board members.
8. Services *ex officio* as a member of committees and attends their meetings when invited.
9. Discusses issues confronting the organization with the Chief Executive.
10. Helps guide and mediate Board actions with respect to organizational priorities and governance concerns.
11. Reviews with the Chief Executive any issues of concern to the board.
12. Monitors financial planning and financial reports.
13. Plays a leading role in fundraising activities *(nonprofit only).*
14. Formally evaluates the performance of the Chief Executive and informally evaluates the effectiveness of the Board members.
15. Evaluates annually the performance of the organization in achieving its mission.
16. Performs other responsibilities assigned by the Board.

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Vice Chair Job Description

This position in typically successor to the Chair position. In addition to the responsibilities outlined in the Committee Member job description, this position:

1. Is a member of the Board.
2. Performs Chair responsibilities when the Chair can't be available (see Chair Job Description).
3. Reports to the Board's Chair.
4. Works closely with the Chair and other staff.
5. Participates closely with the Chair to develop and implement officer transition plans.
6. Performs other responsibilities as assigned by the Board.

Committee Chair Job Description

1. Is a member of the Board.
2. Sets tone for the committee work.
3. Ensures that members have the information needed to do their jobs.
4. Oversees the logistics of committee's operations.
5. Reports to the Board's Chair.
6. Reports to the full Board on committee's decisions/recommendations.
7. Works closely with the Chief Executive and other staff as agreed to by the Chief Executive.
8. Assigns work to the committee members, sets the agenda and runs the meetings, and ensures distribution of meeting minutes.
9. Initiates and leads the committee's annual evaluation.

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Board Member Job Description

1. Regularly attends board meetings and important related meetings.
2. Makes serious commitment to participate actively in committee work.
3. Volunteers for and willingly accepts assignments and completes them thoroughly and on time.
4. Stays informed about committee matters, prepares themselves well for meetings, and reviews and comments on minutes and reports.
5. Gets to know other committee members and builds a collegial working relationship that contributes to consensus.
6. Is an active participant in the committee's annual evaluation and planning efforts.
7. Participates in fund raising for the organization *(nonprofit only).*

Board Secretary Job Description

1. Is a member of the Board.
2. Maintains records of the board and ensures effective management of organization's records.
3. Manages minutes of board meetings.
4. Ensures minutes are distributed to members shortly after each meeting.
5. Is sufficiently familiar with legal documents (articles, by-laws, IRS letters, etc.) to note applicability during meetings.

Board Treasurer Job Description

1. Is a member of the Board.
2. Manages finances of the organization.
3. Administrates fiscal matters of the organization.
4. Provides annual budget to the board for members' approval.
5. Ensures development and board review of financial policies and procedures.

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PRESIDENT / CHAIR / CHIEF VOLUNTARY OFFICER (CVO)

- General: Ensures the effective action of the board in governing and supporting the organization, and oversees board affairs. Acts as the representative of the board as a whole, rather than as an individual supervisor to staff.

- Community: Speaks to the media and the community on behalf of the organization (as does the executive director); represents the agency in the community.

- Meetings: Develops agendas for meetings in concert with the executive director. Presides at board meetings.

- Committees: Recommends to the board which committees are to be established. Seeks volunteers for committees and coordinates individual board member assignments. Makes sure each committee has a chairperson, and stays in touch with chairpersons to be sure that their work is carried out; identifies committee recommendations that should be presented to the full board. Determines whether executive committee meetings are necessary and convenes the committee accordingly.

- Executive Director: Establishes search and selection committee (usually acts as chair) for hiring an executive director. Convenes board discussions on evaluating the executive director and negotiating compensation and benefits package; conveys information to the executive director.

- Board Affairs: Ensures that board matters are handled properly, including preparation of pre-meeting materials, committee functioning, and recruitment and orientation of new board members.

VICE PRESIDENT / VICE CHAIR

- General: Acts as the president/chair in his or her absence; assist the president/chair on the above or other specified duties.

- Special Responsibilities: Frequently assigned to a special area of responsibility, such as membership, media, annual dinner, facility, or personnel.

- Some organizations choose to make the vice president, explicitly or implicitly, the president-elect.

TREASURER

- General: Manages the board's review of, and action related to, the board's financial responsibilities. May work directly with the bookkeeper or other staff in developing and implementing financial procedures and systems.

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- Reports: Ensures that appropriate financial reports are made available to the board. Regularly reports to board on key financial events, trends, concerns, and assessment of fiscal health.

- Finance Committee: Chairs the Finance Committee and prepares agendas for meetings, including a year-long calendar of issues. In larger organizations, a separate Audit Committee may be chaired by a different person.

- Auditor: Recommends to the board whether the organization should have an audit. If so, selects and meets annually with the auditor in conjunction with the Finance and/or Audit Committees.

- Cash Management and Investments: Ensures, through the Finance Committee, sound management and maximization of cash and investments.

Contact Information

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All Office of AIDS Programs and Policy (OAPP) Best Practices Guides are available for *free* in electronic format to anyone who requests them. Additional hard copies of these guides will be mailed for *free* to all OAPP-contracted agencies, upon request.

Anyone interested in requesting a copy of a Best Practices Guide (electronic or hard copy), should please contact Lela Hung, Director of Provider Support Services at the Office of AIDS Programs and Policy by email at lhung@ladhs.org or by phone at (213) 351-8108. All emails should include the following information: name, organization, contact information, the full title of the publication being requested and the number of copies requested.